



# Mapping report on national remedies against online piracy of sports content

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# Foreword

“The wheels of justice grind slowly but very finely.” This short sentence, attributed to the author of *The Art of War*, Sun Tzu (544-496 BC), contains two truths that are fundamental to any legal system: in order to obtain the flour of justice, 1) facts need to be carefully ground to separate the wheat from the chaff, and 2) such fine grinding requires time. This is a necessary trade-off that modern societies have come to accept. There are cases, however, in which another legal maxim (of unclear attribution) applies: “Justice delayed is justice denied”. To put it another way, on certain occasions courts are simply too slow to prevent or even to right a wrong. This is particularly true in the live broadcasting of sports events. The screen life of a sports event is as short as the duration of the game in question since its interest lies mainly in its being watched live. This has as the unavoidable consequence that the piracy of live sports event broadcasts causes immediate and unrecoverable losses in terms of audience and revenues.

This issue has already been in the regulatory spotlight for quite some time. On the occasion of the adoption of the Copyright Directive in 2019, the European Commission “acknowledge[d] the importance of sports events organisations and their role in the financing of sport activities in the Union” and committed to “assess the challenges of sport event organisers in the digital environment, in particular issues related to the illegal online transmissions of sport broadcasts”. A more recent own-initiative Resolution from the European Parliament issued in May 2021 underlines that “the problem with existing measures is that enforcement comes too late” and “calls on the Commission to clarify and adapt existing legislation, including the possibility of issuing injunctions requesting the real-time blocking of access to or removal of unauthorised online content”.

At the behest of the European Commission, the European Audiovisual Observatory has produced the present mapping report, which provides a comprehensive analysis of the remedies adopted at national level in the EU and in the UK against online piracy of sports content. Considering that there is not much wide-ranging literature on the topic, our work has involved looking directly at the sources, such as legislative frameworks and the transposition of EU directives, administrative and judicial procedures, and case-law, and then elaborating a comparative perspective. We have looked in particular at the availability and the functioning of blocking and take-down injunctions, including dynamic injunctions which are being increasingly applied to certain types of online infringements of rights.

We have detected various issues.

The starting point is that sports events as such are not intellectual creations and therefore are not protected by copyright. Nevertheless, the recording of such events or their broadcast may be protected by copyright if they meet certain conditions of originality. In any case, the recording and broadcast of such sports events are protected by the related rights granted to producers of audiovisual works and broadcasting organisations respectively.

Then there is another issue, namely the variety of national legal approaches in terms of the legal protection offered to sports event organisers. With the exception of eight countries where specific audiovisual rights have been provided for by law (Bulgaria,

France, Greece, Hungary, Italy, Romania, Slovakia and Spain), in most other countries, there is no specific regulation. Sports event organisers do, however, often enjoy certain rights related to the stadium or venue (known as domiciliary rights or house rights), which in practice give them the possibility to take legal action for unauthorised access to their premises or for the breach of contractual obligations prohibiting the filming, recording, or broadcasting of the event.

The nature of the rights held by organisers, clubs, leagues or broadcasters has a direct impact on their entitlement to take legal action and on the different types of protection that can be granted. Generally speaking, all rightsholders and assignees of the exploitation rights are entitled to take legal actions, but the legal basis may vary, as may the results. Depending on the legal protection that is granted, legal action may or may not be based on copyright law. This means in practical terms that certain remedies like injunctions against online intermediaries which are contained in copyright laws are only available to rightsholders or assignees.

Speaking of remedies, sanctions also vary from country to country. Most countries provide both civil and criminal remedies, but lengthy procedures are certainly not ideal for instant infringements such as those concerning live sports events. Notice and take-down procedures have proven to be a faster solution, but still, they are not the ultimate solution for live events, considering that sanctions have to be “effective, proportionate” but also “dissuasive”.

Building upon an important judgment of the CJEU of 2014 in the *Telekabel* case, some national courts have started to allow the dynamic use of blocking orders, that is, the extension of the blocking orders to future URLs and not just to currently existing websites. For the time being, live blocking injunctions, that is, injunctions which allow the repeated blocking of a site every time a live broadcast is in process, have been applied only in Ireland, the Netherlands, Spain, Sweden and the UK. These remedies are considered to be extremely efficient, as they can be executed in a timely manner and therefore hinder active live streams.

Such complex mapping could not have been undertaken without the invaluable contribution of our national experts, who helped us gather the relevant information; of our coordinating expert Giovanni Maria Riccio assisted by Fabiola Iraci, who helped us structure and analyse the legal framework; of a number of sports organisations who shared valuable information on the systems they have put in place; and of the institutions across the European member states, who assisted us in checking the correctness of the information. I would like to thank them all.

Strasbourg, December 2021

**Maja Cappello**

Head of the Department for Legal Information  
European Audiovisual Observatory

# Acknowledgements

The data used in the report was provided by a pan-European team of national experts and has been cross-checked by competent institutions of each EU member state.

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- IE The Irish submission was provided by Dr. TJ McIntyre, Associate Professor In the Sutherland School of Law, University College Dublin. He is also a chairperson of the civil liberties group Digital Rights Ireland and specialist adjudicator for the .ie Alternative Dispute Resolution Policy.
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# 1. Executive summary

## 1.1. Project objective

The purpose of this project is the analysis of national remedies against online piracy of sports content, with particular emphasis placed on assessing the availability and examining the functioning of blocking and take-down injunctions, including dynamic injunctions which are being increasingly applied to certain types of online infringement. The analysis reflects a comparative perspective, which takes into account: i) the legislative frameworks and the transposition of EU directives; and ii), the procedures and case law.

## 1.2. Key findings

This section presents the key findings and reports the remedies applied and related procedures.

With regard to the relevance of copyright and related rights for **the legal protection of sports events**, it should be noted that sports events as such are not protected by copyright, as pointed out by the Court of Justice of the European Union (CJEU). In the *Football Association Premier League (FAPL) case*,<sup>1</sup> the court noted that “sporting events cannot be regarded as intellectual creations classifiable as works”, as “the subject-matter concerned would have to be original in the sense that it is its author’s own intellectual creation”. National courts have also reached the same conclusion (e.g. Poland,<sup>2</sup> Spain<sup>3</sup> and Sweden<sup>4</sup>). However, the recording and broadcast of a sports event may

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<sup>1</sup> CJEU, 4 October 2011, *Football Association Premier League Ltd and Others v. QC Leisure and Others* (C-403/08) and *Karen Murphy v. Media Protection Services Ltd* (C-429/08), <https://curia.europa.eu/juris/liste.jsf?num=C-403/08&language=en>.

<sup>2</sup> Regional Administrative Court Warsaw, 20 February 2015, III SA/Wa 1078/14, OP 2015/3/255-258.

<sup>3</sup> Supreme Court, 25 June 2013 (EDJ 2013/140039).

<sup>4</sup> Supreme Court case, NJA 2015 s. 1097:

<https://www.domstol.se/hogsta-domstolen/avgoranden/2015/36097/>.

be protected by copyright, where the recording meets the originality requirement.<sup>5</sup> In addition, the recording and broadcast of a sports event are protected by the related rights that are respectively granted to producers of audiovisual works and to broadcasting organisations. In fact, Articles 2 and 3 of the Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (InfoSoc Directive)<sup>6</sup> and Article 9 of the Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property (Rental and Lending Rights Directive)<sup>7</sup> grant related rights to the producer of an audiovisual works for the first fixation of the work and, on the other hand, to the broadcasters in the broadcast signal.

In some of the countries covered by this mapping report where no specific protection is granted to sports events (e.g. Cyprus, Czech Republic, Germany), sports event organisers can usually rely on domiciliary rights (also referred to as “house” rights), that allow the owner, the tenant or any other subject to claim rights the recordings made within the premises and the venues where the events take place. On this basis, sports event organisers may take legal actions against those who record the sports events without prior authorisation, thus infringing domiciliary rules (unauthorised recording made possible by the access to their premises).

Only eight of the covered countries have expressly regulated the rights on audiovisual sports events (Bulgaria, France, Greece, Hungary, Italy, Romania, Slovakia, Spain). For instance, the French Code of Sport assigns the exploitation rights to sports federations and event organisers in the sports events or competitions they organise, and they are both entitled to take legal actions. However, it is unclear whether such exploitation rights are included among domiciliary rights or whether they are covered by copyright law (in the form of related rights). Article 3 of the Italian Legislative Decree No. 9 of 9 January 2008 holds that the organiser of the competition (the Federation or the League)<sup>8</sup> and the organisers of the events<sup>9</sup> are joint owners of the audiovisual rights relating to the events of the competition. However, Article 4 specifies that only the competition organiser, as the sports event organiser, is entitled to the exercise of the audiovisual rights relating to the single events of the competition.

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<sup>5</sup> The originality requirement is a concept that is used in order to assess whether a work may be protected by copyright or not. According to the *Infopaq* CJEU case, the test is met where the work reflects the author’s own intellectual creation (see CJEU, 16 July 2009, *Infopaq International A/S v. Danske Dagblades Forening*, C-5/08).

<sup>6</sup> 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, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001L0029>

<sup>7</sup> Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006L0115>

<sup>8</sup> Article 2, paragraph 2 (e): “the subject to whom the organisation of the competition is demanded or delegated by the sports federation recognised by the Italian National Olympic Committee, competent for the specific sport discipline”.

<sup>9</sup> Article 2, paragraph 2 (c): “the sports club that assumes the responsibility and the burdens of organising the event played in the sports facility in which it takes place”.

The different **types of protection** granted to sports event transmissions also influence the entitlement to take legal action in the event of infringement. In some cases, the subjects entitled to take legal action in the event of piracy are the sports clubs and the sports league organisers (France, Spain), in other cases only the latter category is entitled (Italy). In general, rightsholders and assignees of the exploitation rights are entitled to take legal action in all the covered countries, even if on a different legal basis and for different types of legal action. In some countries, this entitlement to take legal action is based on the infringement of domiciliary rights, in others on the violation of contractual obligations, and in others, where regulated by national law, on the violation of the rights granted by the law (Italy). However, where the initial rights are transferred to the broadcaster, and the licensee's rights (i.e. the broadcasters' rights) are affected, then the licensee may be entitled to take legal action.

The core of the report is devoted to the **remedies** against online piracy of sports event broadcasts and to the **procedural rules** in place under the national laws of the covered countries. Also, in this respect, the approaches and solutions taken at national level show certain trends, even if the differences among the covered countries are still relevant. There are still significant discrepancies in **notice and take-down** procedures, as they have not been fully harmonised by the Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (E-Commerce Directive).<sup>10</sup> Some countries, in the context of the implementation of the E-Commerce Directive, have introduced notice and take-down procedures on their own (e.g. Finland, Lithuania); in others, administrative procedures have been introduced, while in most cases these procedures have been defined by case law. Several differences among the covered countries still remain with regard to notice and take-down: in some countries the notification is addressed to private parties (i.e. from the complaining party to the Internet Service Providers (ISPs), while in others it is addressed to the administrative authority. In some countries, the recourse to notice and take-down procedures is a condition of admissibility for filing a judicial complaint (e.g. Germany), while in others, the complainant can go to court without first notifying the defendant of the violation.

The situation is less clear in those countries where the **requirements of the notification** are interpreted by the courts. These requirements may include an obligation for the complainant to identify URLs or internet protocol (IP) addresses; to demonstrate, even prima facie, the ownership of the right; to specify the deadlines for the defending party to respond to the notification, and so on. With the exception of Belgium, where the courts follow the requirements identified by the Brussels Court of Appeal in the leading

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<sup>10</sup> 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, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32000L0031>.

case *Belgacom v. IFPI – Universal*,<sup>11</sup> in other jurisdictions, due in part to the scarcity of judicial decisions, the requirements of the notification are not evident.

In the case of infringement of intellectual property (IP) rights, EU legislation provides for the possibility for judicial authorities to issue injunctions against the infringers (Article 11 of Directive 2004/48/EC on the enforcement of intellectual property rights (IPRED)<sup>12</sup> and for rightsholders who are entitled to take legal action to request the application of injunctions against intermediaries whose services are used by a third party to infringe intellectual property (IP) rights (Article 11 of the IPRED, Article 8 of the InfoSoc Directive, and Article 14(1) of the E-Commerce Directive). Although EU legislation does not define blocking injunctions, this expression commonly and generally refers to orders which require intermediary ISPs to put in place the technical measures to block or disable access to a website or a platform. There are no specific injunction procedures for live sports event broadcasting.

In most countries, the general rules provided by the codes of procedure (civil and criminal) for injunctions are followed (e.g. Belgium, Cyprus, Czech Republic, Estonia, Italy, Latvia, Lithuania, Netherlands), while in some countries specific measures provided by the copyright legislation apply (e.g. Austria, Finland). These orders are mainly addressed to ISPs rather than directly to infringers (operators of the websites and of the platforms), and the analysis shows that removal orders addressed directly to infringers are less frequent when compared to blocking orders addressed to ISPs. Furthermore, it should be noted that, according to the procedural rules, the joinder of parties, i.e. the website/platform operator and the ISPs (access and host providers), is not compulsory and that plaintiffs may therefore decide to sue only the ISPs (in order to obtain a blocking injunction) without involving the direct infringer (in order to obtain a removal blocking).

In certain covered countries, courts have started developing a **dynamic use of blocking orders**. In fact, starting from the CJEU's *Telekabel* case,<sup>13</sup> which allows blanket injunctions, some countries (Italy, Spain, Sweden, Netherlands, UK) have experienced the possibility for the courts to extend blocking orders beyond the currently existing websites (or rather the URLs), therefore covering potential future infringements.

For the time being, **live blocking injunctions** have been applied only in Ireland, the Netherlands, Spain, Sweden and the UK. These remedies are considered to be extremely efficient as they can be executed in a timely manner and therefore hinder active livestreams. For instance, in the *Ecatel* case,<sup>14</sup> the Dutch High Court ordered the ISP to implement the blocking order within 30 minutes of receiving the notification from the rightsowners. UK courts have widely applied live injunctions, notably in the cases in

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<sup>11</sup> Brussels, 13 Feb. 2001 (*NV Belgacom Skynet v. Vzvw IFPI Belgium & NV Universal*), A&M, 2001/2, 279, English translation in ECDR, 2002.

<sup>12</sup> Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32004L0048>.

<sup>13</sup> CJEU, C-314/12, *UPC Telekabel Wien*, 27 March 2014, <https://curia.europa.eu/juris/liste.jsf?num=C-314/12>.

<sup>14</sup> High Court, 24 January 2018, *Football Association Premier League v. Ecatel* (C/09/485400 / HA ZA 15-367): <https://www.poderjudicial.es/search/AN/openDocument/d1ecc270d29d6605/20200219>.



which the Football Association Premier League (FAPL) and the Union of European Football Associations (UEFA) brought actions against UK telecoms operators. In these lawsuits, the blocking orders were not addressed to specific websites, but covered a list of servers from which the illegal activity was conducted and the corresponding IP numbers. UK courts also empowered claimants with the possibility of notifying each ISP of the revised list of target servers to be blocked on a weekly basis. Live orders are limited to a certain period of time (e.g. a league season), although they can be extended for subsequent periods of the same sports events. However, the time limit has not been uniformly applied by the courts and significant differences still persist (e.g. Spain, UK).<sup>15</sup>

The **proportionality** of the measures to be adopted is a criterion which is generally cited both by national courts (e.g. Netherlands, Sweden, UK) and in the national legislation (e.g. Finland, Germany, Spain).<sup>16</sup> Proportionality finds its legislative basis in Recital 58 and Article 8(1) of the InfoSoc Directive and Article 3 of the IPRED, which state that, in the case of IP infringement, the sanctions provided for should be effective, proportionate and dissuasive. This principle has been highlighted, for instance, in a decision of the Swedish Patent and Market Court, where the copyright holders brought an action against an access provider aimed at blocking users' access to websites where protected content was made available.<sup>17</sup> In this case, the court issued a dynamic injunction stating that intermediaries may be obliged to take actions to prevent copyright infringements and that this measure was proportionate to the access provider's freedom to trade. Similarly, in the Netherlands, in the above-mentioned *Ecatel* case, the Dutch High Court stated that the live blocking order issued was proportionate to the business freedom of the hosting provider. Finally, in the *FAPL v. BT* case,<sup>18</sup> the UK High Court stated that orders sought by the claimants did not impair the freedom of ISPs to carry on their business, in as much as these orders would not interfere with the provision by the defendants of their services to their customers, neither would the orders require the defendants to acquire new technology, and that the organisers of the sports event and the licensees of the audiovisual rights had a legitimate interest in curtailing copyright infringements.

Finally, one aspect that does not yet seem to have been examined in the case law, apart from *obiter dicta* in a few cases concerning the infringement of sports event

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<sup>15</sup> For more information on the case law concerning dynamic blocking injunctions, see also Frosio, G. and Bulayenko, O., "Study on Dynamic Blocking Injunctions in the European Union", *IPR Enforcement Case-law Collection*, EUIPO in cooperation with the Centre for International Intellectual Property Studies (CEIPI): [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_Dynamic\\_Blocking\\_Injunctions/2021\\_Study\\_on\\_Dynamic\\_Blocking\\_Injunctions\\_in\\_the\\_European\\_Union\\_FullR\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_Dynamic_Blocking_Injunctions/2021_Study_on_Dynamic_Blocking_Injunctions_in_the_European_Union_FullR_en.pdf).

<sup>16</sup> See Section 60c(1) of the Finnish Copyright Act (Act 404/1961, as amended by Act 679/2006).

<sup>17</sup> Swedish Patent and Market Court, 9 December 2019, Case No PMT 7262-18, <https://www.domstol.se/patent--och-marknadsdomstolen/>.

<sup>18</sup> *FAPL v.s BT and Others II* – [2018] EWHC 1828 (Ch); *UEFA v.s BT and Others* – [2017] EWHC 3414 (Ch).

broadcasting, is the compatibility with the principle of proportionality of the **allocation of the costs** of blocking orders to ISPs.

**Sanctions** also are different in the various countries. While most of the covered countries provide both civil and criminal remedies for IP infringement, criminal cases are quite rare. The commercial or for-profit purpose of the infringement is taken into consideration in the majority of the covered countries, although there are some exceptions (e.g. Bulgaria, Cyprus, Latvia, Poland, Romania).

This comparative analysis also describes the **administrative authorities** that exist in some countries and which have been created or given specific powers in relation to IP infringement and administrative blocking orders. These administrative bodies have different powers and may issue blocking orders, based on different procedural rules (e.g. Estonia, France, Greece, Italy, Lithuania, Spain). In Italy, a significant number of copyright cases (154 cases at the time of writing), including in the field of sports event broadcasting, have been filed before AGCOM (the Italian Communications Authority), whose competence is limited to issuing removal or blocking orders against ISPs. In France, a law was recently adopted establishing the creation of a new integrated regulatory authority for audiovisual and digital communications, ARCOM,<sup>19</sup> with extended competences in relation to online piracy.

In order to combat online piracy efficiently and facilitate the enforcement of copyright and related rights, **codes of conduct** and/or Memorandums of Understanding (MoU) have been adopted at the national level by public and/or private entities in only a minority of countries (codes of conduct in Denmark, France, Netherlands, Spain and MoU in Czech Republic, Latvia, Poland, Portugal, Slovakia, UK). In Germany, the Clearing House for Copyright on the Internet (CUII) has been formed by ISPs and rightsholders with the aim of blocking access to structurally copyright-infringing websites. Some of the codes and MoU are expressly devoted to the broadcasting of live events, such as the MoU agreed among the Portuguese associations,<sup>20</sup> which provides a specific procedure aimed at facilitating the blocking of infringing websites. Initially concluded in 2015, it was reviewed in 2018 to tackle the piracy of live events. The new agreement facilitates the temporary blocking of illegal transmissions of sports events, in particular football matches, on the internet. The results obtained in Portugal demonstrate that this approach is efficient.

Finally, this comparative analysis has aimed to identify **studies and reports** that deal with the issue of illegal online transmissions of sports events (France, Hungary, Latvia, Poland, Spain, UK). Certain studies analyse the technologies and business models

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<sup>19</sup>Law No. 2021-1382 of 25 October 2021 on the regulation and protection of access to cultural works in the digital age (*LOI n° 2021-1382 du 25 octobre 2021 relative à la régulation et à la protection de l'accès aux œuvres culturelles à l'ère numérique*), <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000043339178/>.

<sup>20</sup> The IGAC, the Portuguese Association of Telecom Operators, the Portuguese Consumer Directorate-General, the organisation responsible for “.pt” domain registrations (DNS.PT), the anti-piracy group MAPINET, advertising associations and consumer associations:  
[http://www.apel.pt/gest\\_cnt\\_upload/editor/File/apel/direitos\\_autor/memorando\\_APRITEL\\_IGAG\\_MAPINET.pdf](http://www.apel.pt/gest_cnt_upload/editor/File/apel/direitos_autor/memorando_APRITEL_IGAG_MAPINET.pdf)

used for illegal streaming of sports content, as reported in studies conducted in certain countries (Belgium, France, Latvia, Poland, Spain). In several countries, awareness campaigns related to online piracy have been launched (Austria, Croatia, Cyprus, Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Romania, Slovenia, Slovakia, Spain, UK).

## 2. Methodology and structure of the mapping report

The report relies on an extensive review of EU law, CJEU judgments (including the reception of the outcomes of these judgments by national courts), national legislation and case law concerning the remedies against online piracy of audiovisual sports content. The review of national legislation, case law and practices is based on the information provided by national legal experts through a standardised questionnaire.

- The methodology adopted by the European Audiovisual Observatory can be summed up as follows:
- the selection of an international expert to provide assistance throughout the mapping and the elaboration of a comparative analysis;
- the selection of national experts from relevant institutions, universities and/or law firms;
- the elaboration of a standardised questionnaire on national remedies against online piracy of sports content from a legal and non-legal perspective to be filled in by each national expert;
- one questionnaire per country was completed;
- the compilation of information collected in country reports checked by the national expert and subsequently sent for checking to the national experts of the European Commission Contact committee on Copyright in the information society.<sup>21</sup>

The questionnaire aimed at identifying:

- the national framework on copyright, applicable also to audiovisual sports events, and including the transposition of EU regulations and directives, with a focus on the national remedies;
- the availability and functioning of notice and take-down procedures, removal and blocking injunctions, dynamic and live blocking injunctions and de-indexing injunctions, in relation to sports events;
- the existence and competences of national bodies, and the implementation of self and co-regulatory initiatives to combat online piracy (codes of conduct and MoUs);

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<sup>21</sup> Except for those EU countries where no names of national experts on the Contact Committee could be provided and for the UK.

- the relevant case law at the EU and national levels related to the infringement of audiovisual sports content;
- the reports and studies concerning piracy of audiovisual sports content and other non-legal considerations.

Based on these elements, the European Audiovisual Observatory, with the assistance of an international expert, elaborated a national country report for each member state. These legal summaries have been checked by the national experts of each country and subsequently sent for checking to the national experts of the European Commission Contact committee on Copyright in the information society.

The country reports can be divided into the following sections:

- Section 1: *General legal framework* – this section provides an analysis of national legislation on copyright and related rights and the transposition of the relevant provisions of the EU directives.
- Section 2: *National rules applicable to audiovisual sports content* – this section provides the legal definitions of broadcasters and sports event organisers, with a particular focus on specific rules applicable to sports events. This section also analyses the legal protection of audiovisual recordings and broadcasts of sports events, in particular with regard to who holds the rights and who is entitled to take legal action.
- Section 3: *Remedies and sanctions applicable in the event of infringement* – this section aims at listing the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content. Moreover, the section reports the existence of national bodies with competences on IP infringement and the implementation of codes of conduct and MoUs. This section also reports on the implementation and application of notice and take-down procedures, removal and blocking injunctions, including de-indexing, dynamic injunctions, and the applicable sanctions.
- Section 4: *Case law* – this section presents relevant national cases related to the infringement of audiovisual sports content, with particular reference to the following aspects: the concept of communication to the public; knowledge and awareness of the illegal activity; notice and take-downs; measures against end-users and criminal sanctions.
- Section 5: *Reports and studies* – this section provides a list of reports and studies concerning piracy of audiovisual sports content, including the implementation of awareness-raising campaigns and the existence of associations involved in the fight against online piracy of protected content.

The comparative legal analysis mirrors the structure of the national legal summaries and, for the issues detailed in the aforementioned sections 1 to 5, provides an analysis aimed at highlighting the common trends and patterns which exist between the covered countries, as well as the relevant specificities of some individual cases.

## 3. Comparative legal analysis

### 3.1. Scope of protection of sports events

This section outlines the scope of protection of sports events, in particular, the existence of a definition of sports events and sports event organisers in national law, and the application of national laws on IP infringement to sports event content, taking into account that the sports event itself is not protected as an object of copyright or related rights. It also contains reference to specific rules and details as to the subjects entitled to take legal action.

#### 3.1.1. Definition of sports events and sports event organisers

In general, the legislation of most of the covered countries does not contain an explicit definition of sport events, with the exception of Italy and Latvia.

For instance, Article 2 of Italian Legislative Decree No. 9 of 9 January 2008 qualifies as a sports event any match played by two teams as part of a competition – according to the modalities and duration laid down by sports regulations – organised by the person or organisation which has sports facilities to host the event and which is open to the public.<sup>22</sup> The Latvian Sports Law (*Sporta likums*)<sup>23</sup> provides for a legal definition of “sports events” in Section 1 No. 5, whereby a sports event can be a sports competition, a sports demonstration or any other activity in the field of sport.

In some countries, sports events are merely mentioned in certain legislative provisions (e.g. Czech Republic,<sup>24</sup> France,<sup>25</sup> Spain<sup>26</sup>) without a specific definition. Similarly,

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<sup>22</sup> <https://www.camera.it/parlam/leggi/deleghe/08009dl.htm>

<sup>23</sup> <https://likumi.lv/ta/en/en/id/68294-sports-law>

<sup>24</sup> The Broadcasting Act (BA) uses the term “broadcasting of sports event” and “live transmission of sports event”, without further elucidation in the context of the obligations of the radio and television broadcaster as regards the promotion of European production (sections 42, 43 BA) and advertisement and product placement (sections 49, 50, 53a BA).

<sup>25</sup> Code du Sport, Article L. 331-5

[https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006071318/2021-04-06/](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006071318/2021-04-06/)

<sup>26</sup> The General Law on Audiovisual Communication includes sports events within the definition of “television programmes” that are broadcast on television: <https://www.boe.es/buscar/act.php?id=BOE-A-2010-5292>.

an explicit definition of “sports events organiser” is found in only a few countries. For instance, Article 2 of Italian Legislative Decree No. 9 of 9 January 2008 qualifies “sports event organisers” as the sports club undertaking the responsibility and the corresponding obligations for the organisation of the sports event taking place in sports facilities at its disposal. The same provision also defines a “sports league organiser” as the person to whom the organisation of a sports competition is assigned or delegated by the competent sports federation, recognised by the Italian National Olympic Committee.

In other countries, sports event organisers are not defined in the national law which might, however, mention the conditions under which a subject may be authorised to organise an event (e.g. Bulgaria,<sup>27</sup> Czech Republic,<sup>28</sup> France). In other cases, the law mentions the categories of subjects which may organise such events (e.g. Croatia,<sup>29</sup> Hungary<sup>30</sup>) and the obligations that they have to carry out for the organisation. Only in Latvia are sports training sessions explicitly not considered as events.<sup>31</sup> However, in the other covered countries, even if it is not specifically provided, sports training sessions are generally not considered as events.

### 3.1.2. Legal protection related to sports events

As a general rule, sports events as such are not considered to be creative works and therefore do not fulfil the prerequisites for copyright protection. As explained by the CJEU in its judgment of 4 October 2011, in the *Football Association Premier League (FAPL) case*<sup>32</sup>, “the subject-matter concerned would have to be original in the sense that it is its author’s own intellectual creation” and “sporting events cannot be regarded as intellectual creations classifiable as works” within the meaning of the InfoSoc Directive. In other words, the lack of creative choices and expressive freedom is the main argument for excluding sports events as such from copyright protection. Furthermore, athletes’

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<sup>27</sup> Article 10 (1) of the Physical Education and Sports Act 1996. According to the Act, organisers must be legal entities, which carry out training, competitive and organisational-administrative activity in one or several kinds of sports and develop and popularise physical education and sport.

<sup>28</sup> Section 7a of Act No. 115/2001 Coll., on Support for Sport (*Zákon č. 115/2001 Sb., o podpoře sportu*), defines the “operator” (*provozovatel*) as a person that is authorised by the owner of the sports facility to organise a “sports undertaking” under the stipulation of obligations relating to the safety of persons and property during the course of the sports undertaking. (*Zákon č. 115/2001 Sb., o podpoře sportu*, <https://www.psp.cz/sqw/sbirka.sqw?cz=115&r=2001>).

<sup>29</sup> Article 18, paragraphs 1 and 3 of the Sports Act (*Zakon o sportu NN 71/06, 150/08, 124/10, 124/11, 86/12, 94/13, 85/15, 19/16, 98/19, 47/20, 77/20*): <https://zakon.hr/z/300/Zakon-o-sportu>

<sup>30</sup> Although the law does not define the sports event organised, this role is reserved to sports clubs and sports federations (Article 65 (2) of the Act on Sports (2004. évi I. törvény a sportról)) which are both defined (respectively by Article 17 and Article 19 of the same act).

<sup>31</sup> Section 15(1) of the Latvian Sports Law

<sup>32</sup> *Football Association Premier League Ltd (FAPL) and Others v. QC Leisure and Others* (C-403/08), Op. cit. paragraphs 97-98.

performances may reflect their skills, but these are not considered creative enough to be protected by copyright.

Similarly, the Spanish Supreme Court stated that sports events as such cannot be considered copyrightable because they do not have a minimum degree of originality and creativity.<sup>33</sup> The Regional Administrative Court in Warsaw reached the same conclusion and added that the broadcasting of a sports event is the mere representation of the event, providing image and sound using such technical means that the observer can follow it in real time.<sup>34</sup> However, both the audiovisual recording and the broadcast of sports events may be protected by copyright, provided they fulfil some originality criteria. In addition, Articles 2 and 3 of the Infosoc Directive and Article 9 of the Rental and Lending Rights Directive grant related rights, on the one hand, to producers of audiovisual works for the first fixation and, on the other, to the broadcasters of the broadcast signal.

Furthermore, the CJEU's observation in the *Football Association Premier League* case is worthy of note in this regard:

*[S]porting events, as such, have a unique and, to that extent, original character which can transform them into subject-matter that is worthy of protection comparable to the protection of works, and that protection can be granted, where appropriate, by the various domestic legal orders.*<sup>35</sup>

and therefore

*it is permissible for a Member State to protect sporting events, where appropriate by virtue of protection of intellectual property, by putting in place specific national legislation, or by recognising, in compliance with European Union law, protection conferred upon those events by agreements concluded between the persons having the right to make the audiovisual content of the events available to the public and the persons who wish to broadcast that content to the public of their choice.*<sup>36</sup>

Only eight of the covered countries have created special forms of protection for sports event organisers (specific rights in France, Greece, Italy and Spain; other specific provisions in the law in Bulgaria, Hungary, Romania and Slovakia). On this point, it is worth mentioning Law No. 2725/1999 on Amateur and Professional Sports in Greece, amended by Law No. 4612/2019, which provides for the right to remuneration for authorising, e.g. the broadcasting or retransmission of the event and its recording and reproduction.

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<sup>33</sup> Supreme Court, 25 June 2013 (EDJ 2013/140039).

<sup>34</sup> Regional Administrative Court Warsaw, 20 February 2015, III SA/Wa 1078/14, OP 2015/3/255-258.

<sup>35</sup> *Football Association Premier League Ltd (FAPL) and Others v. QC Leisure and Others* (C-403/08), Op. cit. paragraph 100.

<sup>36</sup> *Football Association Premier League Ltd (FAPL) and Others v. QC Leisure and Others* (C-403/08), Op. cit. paragraph 102.





### 3.1.2.1. Rights attached to the venue or the sports event organiser

In many countries (e.g. Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Luxembourg, Malta, Netherlands, Slovenia, Sweden), domiciliary rights (also referred to as “house” rights) apply to sports events. This category of property rights grants protection to the owner, the tenant or any other subject who may claim rights over the premises and the venues where the events take place. Sports clubs are generally entitled to these rights because they own premises and venues (e.g. stadiums) or, more frequently, because they lease the facility from a public (e.g. municipalities) or a private entity.

Domiciliary rights only allow the rightsowner to control access to the venue where a given sports event takes place and to prohibit the unauthorised recording of the event, e.g. through mobile phones. This legal protection may be based on the contractual terms associated with the sale of tickets or on a proprietary relationship with the venue. The sports event organisers owning the domiciliary rights also hold the right to authorise or not the broadcasting or the making of audiovisual recordings of sports events, based on the right to allow access to the sports event venue. Sports event venues can be owned by public local authorities, such as municipalities, or by private entities such as the top clubs which own their own stadiums.

The domiciliary rights consist in the legal basis for sports events organisers to negotiate the conditions and the rules for audiovisual production companies and broadcasters to record or broadcast the event. For instance, in Germany, with regard to the rights of sports event organisers, the courts held that sports event organisers are entitled to exercise their domiciliary rights in order to prohibit any activities within the organisation’s facilities that may lead to an infringement of their interests, i.e. unauthorised filming by unauthorised parties.<sup>37</sup> So, sports event organisers are exclusively entitled to grant permissions to film and broadcast the event within their premises, on the basis of their domiciliary/house rights.<sup>38</sup> This approach has been confirmed in later judgments by the German courts. In a famous case, known as the *Hörfunkrechte* case, the German Federal Supreme Court held that football clubs have the right to prohibit audio recordings, filming or photographing of their games from within the stadium. If the spectators do not respect these rules, they may be forced to leave the premises.<sup>39</sup>

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<sup>37</sup> BGH (German Federal High Court of Justice), decision of 14 March 1990 - KVR 4/88 – Sportbroadcast, in GRUR (*Gewerblicher Rechtsschutz und Urheberrecht*) 1990, 702: <https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=14.03.1990&Aktenzeichen=KVR%204/88>.

<sup>38</sup> BGH (German Federal High Court of Justice), 14 March 1990 6 KVR 4/88 – *Sportübertragungen*, published in GRUR (*Gewerblicher Rechtsschutz und Urheberrecht*) 1990, 702: <https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=14.03.1990&Aktenzeichen=KVR%204/88>.

<sup>39</sup> BGH 8 November 2005, KZR 37/03 (*Hörfunkrechte*):

Also, the Danish Supreme Court established that sports event organisers can only authorise or not authorise filming or broadcasting the event within their premises.<sup>40</sup> However, the right to broadcast or make audiovisual recordings can be transferred by a contractual agreement, resembling a licence agreement. The permission granted is only contractual and effective against the parties to the agreement, and not against other parties.

### 3.1.2.2. Rights attached to the audiovisual recording

#### 3.1.2.2.1. Sports events, audiovisual recording and copyright protection

There is no uniform EU approach to what constitutes a work of authorship under copyright law. In all the covered countries, the originality and/or creativity of the work of authorship are prerequisites for a work to be eligible for protection under copyright law. Also, as mentioned above, in all national legislations, sports events are not copyrightable per se. Nevertheless, audiovisual recordings of sports events may be protected by copyright, provided that the recording can be considered as the author's own intellectual creation, reflecting the choices and the personality of the author of the work (e.g. choices on subjects to be filmed, camera angles, framing, etc.).<sup>41</sup> As mentioned above, only if the audiovisual recording of the sports event is creative – thanks to the filming or editing or position of cameras – can it be protected by copyright law.<sup>42</sup>

In this respect, the Swedish Supreme Court ruled that, in order for a television broadcast of a sports event to be considered a protected work, it is required that the content of the broadcast go beyond simply following the match or the competition itself and that the content can be defined as IP content.<sup>43</sup>

In the Netherlands, even if the fixation of a film is not a precondition for copyright protection, the event must be recorded with some creativity in order for it to be eligible for copyright protection. In the *Ecatel* case, the Hague Court stated that it is necessary to

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<http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=34602&pos=0&anz=1>.

<sup>40</sup> Danish Supreme Court U2004 2945 H and U 1982 179:

<https://www.jurabibliotek.dk/view/book/9788771981865/back-1.xml>,

<sup>41</sup>The CJEU, in the *Panier* case, stated that the author should be able to express his/her creative abilities in the production of the work by making “free and creative choices in several ways and at various points in its production”. (*Eva-Maria Painer v. Standard VerlagsGmbH and Others*, Case C-145/10, [https://curia.europa.eu/juris/document/document.jsf?text=&docid=115785&pageIndex=0&doclang=en&mode=\\_lst&dir=&occ=first&part=1&cid=171443](https://curia.europa.eu/juris/document/document.jsf?text=&docid=115785&pageIndex=0&doclang=en&mode=_lst&dir=&occ=first&part=1&cid=171443)).

<sup>42</sup> See for instance, the Austrian Supreme Court in OGH – 4 Ob 208/15i - 7.1.2016, and 4 Ob 184/13g – 17.12.2013.

<sup>43</sup> Supreme Court case, NJA 2015 s. 1097:

<https://www.domstol.se/hogsta-domstolen/avgoranden/2015/36097/>. Previously, the Court of Appeal of Norrland, 20 June 2011, n. B 1309-10, upheld a decision stating that the recording of a hockey match, with the commentary, could not fall within copyright protection.

make creative choices, including with regard to the placement of cameras, for the recording of a football match to be considered as a copyright-protected work.<sup>44</sup>

In Ireland<sup>45</sup> and the UK,<sup>46</sup> however, fixation on a tangible medium is a requirement for all copyrighted works, including films. In other cases (notably sports events involving minor economic investment), filming may not be protected by copyright, as the degree of originality and creativity is not sufficient (for instance filming with the aid of still cameras, drones or robots may not be considered as fulfilling the creativity criteria, lacking the choices and the stamp of the author).

#### 3.1.2.2.2. Licences for the recording of sports events

If the sports event organiser (i.e. the federation or the league) records the sports event, it will own the copyright in the recording, provided that the recording meets the conditions of originality and creativity, as well as the related economic exploitation rights to that recording.

In practice, sports event organisers usually commission the recording of the sports events by third parties, such as broadcasters and/or producers, who hold related rights in the work. In such cases, the sports event organisers may also transfer – with an appropriate licence – the copyright in the work to the broadcasters and the producer. It is therefore the responsibility of the broadcaster and/or the producer under this licence to record and fix the event on a tangible medium.

#### 3.1.2.2.3. Producers' related rights

The producer of the audiovisual work (i.e. the subject which materially produces the recording) is granted related rights in the recording. This is the case in all covered countries, in accordance with the Rental and Lending Rights Directive, which grants related rights to the producer of the first fixation of the film, provided that the recording of the sports event is considered to be a film or cinematographic work within the meaning of Article 2 of the Rental and Lending Rights Directive, i.e. “a cinematographic or audiovisual work or moving images, whether or not accompanied by sound”.<sup>47</sup>

Originality is not required for the granting of these related rights. However, if the film is also original, it will be protected by copyright (as a copyrighted film) and by related

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<sup>44</sup> *Football Association Premier League v. Ecatel*, op. cit.

<sup>45</sup> Section 2(1) Copyright and Related Rights Act of 2000.

<sup>46</sup> Section 5B Copyright, Designs and Patents Act of 1988.

<sup>47</sup> Moreover: i) the exclusive right to authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access the original and any copies of the film from a place and at a time individually chosen by them; ii) the exclusive right to distribute (make available to the public in tangible copies) by sale or otherwise, in respect of the original or copies of their films.

rights (for the first fixation). Furthermore, Articles 2(1)(d) and 3(2)(c) of the InfoSoc Directive grant the producers of the first fixations of films, in respect of the original and copies of their films, the exclusive rights to authorise the reproduction and the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them (i.e. video on demand). Unless national laws expressly provide otherwise,, the related rights in the recording belong to the producers of the recording, who assign them to sports organisers.

### 3.1.2.3. Related rights of broadcasters

Related rights are also granted to broadcasters for the transmission of broadcast signals for public reception. In fact, according to Articles 7(2), 8(3) and 9(1)(d) of the Rental and Lending Rights Directive, broadcasters have the right to authorise or prohibit the fixation of the broadcasts, the reproduction and the distribution of fixations, the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee. Furthermore, Articles 2(1)(e) and 3(2)(d) of the InfoSoc Directive respectively provide broadcasters with the exclusive rights to authorise the reproduction and the communication to the public of the “fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite”.<sup>48</sup>

In this case too, it is not necessary for the broadcast to meet any criteria of creativity or originality in order to be protected by related rights. The rights which are granted to broadcasters are as follows: (i) fixation; (ii) reproduction by specific technique; (iii) broadcast by a television broadcasting organisation; (iv) rebroadcast; (v) putting fixations into circulation; (iv) communication to the public at locations accessible for an entrance fee; (vii) making their fixations available in such a way that anyone can access the work at the place and time of their choosing (making the programme available online).

### 3.1.2.4. Special forms of protection in the covered countries

As permissible under the CJEU’s judgment in the *Football Association Premier League* case,<sup>49</sup> which states that member states can grant sports events specific legal protection under

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<sup>48</sup> The CJEU, in the *C More Entertainment AB* case, ruled that the InfoSoc Directive must be interpreted as not precluding national legislation extending the exclusive rights of the broadcasting organisations as regards acts of communication to the public which broadcasts of sporting fixtures made live on the internet may constitute, provided that such an extension does not undermine the protection of copyright; CJEU, *C More Entertainment AB v. Linus Sandberg*, 26 March 2015, C-279/13:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=163250&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=22498559>

<sup>49</sup> <https://curia.europa.eu/juris/liste.jsf?num=C-403/08&language=en>.

national laws, eight of the covered countries have specific regulation of audiovisual rights of sports events (Bulgaria, France, Greece, Hungary, Italy, Romania, Slovakia, Spain). As a preliminary point, it should be noted that the above-mentioned audiovisual rights of sports events are regulated differently under various legal provisions in the covered countries, as reported in this section.

The French Code of Sport<sup>50</sup> assigns the exploitation rights to the sports federations and event organisers in the sports events or competitions that they organise. However, French legislation does not set the boundaries of these exploitation rights, nor does it specify which rights can be included under the notion of exploitation. In the Roland Garros case (*Fédération Française de Tennis, FFT v. Unibet*), damages were awarded to the FFT based primarily on the violation of its exploitation rights and trademark infringement. As regards “exploitation” rights, the court ruled that any form of economic activity whose purpose is to generate a profit and which would not exist if the sports event itself did not exist, must be regarded as an exploitation within the meaning of this text. Additionally, the court stated that the violated rights were included in the property rights.<sup>51</sup> In any case, the exploitation rights only cover the broadcasting of sports events and do not include information and images not directly or exclusively related to sports events organised by a federation. The Code of Sport also states that all or part of the exploitation rights in sports events and competitions organised in each sports season by the professional league may be assigned at no cost by the sports federations to sports clubs provided that such sport clubs participate in these events and competitions (Article L. 333-1).<sup>52</sup> The commercial conditions of the exploitation rights assigned are defined through a decree.

Another example of specific regulation of audiovisual sports events is provided by Article 3 of Italian Legislative Decree No. 9 of 9 January 2008, which holds that the organiser of the competition (the Federation or the League) and the organisers of the events (clubs) are joint owners of the audiovisual rights relating to the events of the competition. However, Article 4 specifies that the exercise of the audiovisual rights relating to the individual events of the competition is owned by the organiser of the competition. Pursuant to Article 4(4), the audiovisual production of the event is managed by the organiser of the event who, for these purposes, can film directly or through a technical filming service, or rely on the broadcasters who have been assigned the audiovisual rights. If the organiser of the event does not intend to carry out the audiovisual production, then it is carried out by the organiser of the competition, who can film directly or through a technical camera service or rely on the assignees of audiovisual rights. The Italian legislative decree has also created a new and specific related right, by

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<sup>50</sup> [https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006071318/2021-04-06/](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006071318/2021-04-06/).

<sup>51</sup> Legalis, *L'actualité du droit des nouvelles technologies, Cour d'appel de Paris Pôle 5, 1ère chambre Arrêt du 14 octobre 2009*: <https://www.legalis.net/jurisprudences/cour-dappel-de-paris-pole-5-1ere-chambre-arret-du-14-octobre-2009/>.

<sup>52</sup> [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006071318/LEGISCTA000006167058/#LEGISCTA000006167058](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006071318/LEGISCTA000006167058/#LEGISCTA000006167058).

amending the Copyright Law and introducing Article 178-*quater*, which states that the Copyright Law is applicable to audiovisual sports rights. This also means that audiovisual sports rights derogate from the general rule of Article 178-*ter* of the Copyright Law which, by implementing the Rental and Lending Rights Directive, grants exclusive rights to the producer of cinematographic or audiovisual works or sequences of moving images. Thus, the Italian Copyright Law grants related rights to both the organiser of the competition (pursuant to Article 178-*quater*) and the producer (Article 178-*ter*).

The Greek law on sport also provides for specific protection for sports events organisers (Law No. 2725/1999 on Amateur and Professional Sport, as last amended by Law No. 4612/2020). Sports event organisers are granted exclusive economic rights over a sports event as they are the legal entities organising and running the event. Every sports club or professional sports entity enjoys the right to authorise through remuneration: (i) radio or television broadcasting or retransmission, by any technical means, of sports events hosted by said club or entity; (ii) recording and reproduction of sports events or their snapshots, by any means and in any fixation material; (iii) public distribution of said reproduction material by transfer of ownership, rental or public lending. Sports event organisers can licence the above-mentioned related rights through an exclusive or a non-exclusive licence.

In Spain, a Royal Decree holds that participation in a football league automatically entails the assignment by the clubs to the organiser of the competition of the right to commercialise the audiovisual rights to broadcasters on a collective basis.<sup>53</sup> This provision only covers the First and Second Divisions of the football league and some specific tournaments (the so-called King's Cup, *Copa de S.M. el Rey*) or single events (Spanish Super Cup). According to Article 1 of this Royal Decree, the rights of exploitation of audiovisual content of football competitions include:

*events that develop on the pitch, including the areas of the sports arena visible from the same, from two minutes before the scheduled start time of the sporting event until the minute following its conclusion, and include the rights for its broadcast both live and deferred, in its entirety and in summary or fragmented versions, intended for exploitation on the domestic market and in international markets.*

It must be said that, according to Article 2 of the Royal Decree, the “ownership of the audiovisual rights included” in the scope of the Royal Decree belongs to the participating clubs, but the participation in an official professional football competition shall necessarily involve the assignment by the holders (i.e. the clubs) of the right to the joint marketing of the audiovisual rights to the organiser of the competition (i.e. the League).

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<sup>53</sup>Royal Decree No. 5/2015 of 30 April 2015 on urgent measures in relation to the commercialisation of the exploitation rights of audiovisual content of professional soccer competitions. <https://www.global-regulation.com/translation/spain/616497/royal-decree-law-5-2015%252c-of-30-april%252c-on-urgent-measures-in-relation-to-the-marketing-of-the-rights-of-exploitation-of-audiovisual-content-of-prof.html>

In the other countries that do not have specific regulation of audiovisual rights, the collective selling of audiovisual rights by sports organisers (leagues or federations) to broadcasters is standard practice, with the sole exceptions of Portugal and Cyprus. The exploitation of the audiovisual rights is granted to sports event organisers on a legislative or a contractual basis.

On a contractual basis, in other countries, as mentioned, the collective management and selling of audiovisual rights relies on the provisions of the federations' statutes (e.g. Czech Republic, as well as the above-mentioned countries, where the legislative provisions exclusively cover football events). In fact, the participation of a club in a sports league or a sports federation automatically implies the acceptance of the rules of these leagues and federations, including the rules assigning the exploitation of audiovisual rights to the organiser. An exception is made when the clubs are also the organisers of the competition, as in the case of friendly matches or tournaments. In these cases, clubs are also entitled to commercialise the audiovisual rights in these events to broadcasters. Moreover, in Bulgaria, Hungary, Romania and Slovakia, there are some provisions that refer to audiovisual sports events and sports event organisers.

On a legislative basis, Article 36(1) of the Hungarian Sports Act states that the "recording and broadcasting of sporting activity" belong to the sports federation which is entitled to enter into agreements for the exploitation of the audiovisual rights (and, in general, of the media rights) on behalf of the athletes and of the clubs. Similarly, Article 13(3) of the Bulgarian Physical Education and Sports Act<sup>54</sup> holds that broadcasting rights are granted to clubs and sports federations, even if the contracts with broadcasters are made only by federations through a collective licence. The only case in which the clubs may directly negotiate with the broadcasters is that in which a sports event or a competition (such as friendly matches or tournaments) is directly organised by the club. However, this is a general rule which is followed in all the other countries in which a centralised negotiation with the broadcasters is recognised as pertaining to the sports leagues. As mentioned above, in Romania, Article 45(1) c) of Law No. 69/2000 on Physical Education and Sports, the sports organisers, national sports federations and other sports structures hold exclusive rights in the advertising, publicity and radio and television transmission of the competition. In Slovakia, Article 8 Section 9 of Act No. 440/2015 on Sport confers the right to give consent to the use of video, audio and video-audio transmissions and recordings from competitions and other events, as well as the right to indicate the competition by name, an unmistakable image symbol, an unmistakable audible signal and the exclusive right to use that sign.

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<sup>54</sup> <http://www.lex.bg/bg/laws/ldoc/2133881857>.

### 3.1.3. Entitlement to take legal action regarding sports events

As for the entitlement to take legal actions, the analysis highlights significant differences among the covered countries. First and foremost, the “entitlement to take legal action” is understood to be the status and condition of having the legal standing to assert one’s rights – in the case of violation – before a court. Through a court action, the subject can therefore ask for specific protection, such as inhibiting the violation, ordering an injunction or obtaining compensation for the infringement of his/her rights. With regard to sports events, the owner of the venue in which the sports event takes place (generally, the sports club), or any licensee, may take legal action against any person who records or transmits the event taking place in the venue without prior authorisation, in breach of property rules (unauthorised access to the premises) or contractual rules (breach of contractual obligations in the conditions of access which prohibit anyone with access to the premise from filming, recording or broadcasting the event). These types of actions are rare as they are not related to mass infringements, such as those committed by the websites which retransmit the signal of sports events, but exclusively by the spectators of these events.

In some jurisdictions, sports clubs can also be entitled to act against any person, other than the licensed broadcaster, who unlawfully rebroadcasts the sports event.<sup>55</sup> This is possible in those countries (Bulgaria, Greece, Hungary, Romania) where the clubs are entitled to autonomously negotiate audiovisual rights of sports events, but also in those countries (Spain, Czech Republic, Portugal, Sweden) where the rules of the federations or of the clubs entitle sports event organisers to negotiate audiovisual rights on behalf of the clubs.<sup>56</sup>

This entitlement has been recognised in the Dutch case law, where the courts held that the clubs are entitled to prohibit the rebroadcasting of sports events, based, *inter alia*, on a judgment of the Dutch Supreme Court of 1987 granting sports clubs a form of protection in respect of the broadcasting rights linked to their house rights.<sup>57</sup> In another case, it was disputed whether the football league was entitled to take legal actions instead of the clubs: the Court of First Instance stated that the audiovisual rights were owned by both the club and the league in charge of the tournament, but the Court of

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<sup>55</sup> Even if case law has not been reported, see Court of Lisbon, 26 September 2001, in which the sports club Benfica sued television sports company Olivesdesportos, with which the club had entered into an agreement for the audiovisual rights of soccer matches: <https://www.sportbusiness.com/news/benfica-lose-tv-rights-court-case/>.

<sup>56</sup> Liga Portugal (LP) and the Portuguese Football Federation (FPF) have entered into an agreement (a memorandum of understanding – MoU) under which the audiovisual rights of the soccer Primeira Liga will be centralised and negotiated directly by the FPF instead of by the individual football clubs from the 2027/2028 season onward.

<sup>57</sup> Hoge Raad, 23 October 1987, NJ 1988, 310 (*KNVB v. NOS*); Hoge Raad, 23 May 2003, NJ 2003, 494 (*KNVB v. Feyenoord*).





Appeal, and subsequently the Supreme Court, reversed this decision, granting the rights exclusively to the clubs and thus the entitlement to sue the infringers.<sup>58</sup>

In Spain, the law provides only for an obligation to transfer the powers of jointly commercialising audiovisual rights to the sports event organisers, but those rights are still owned by the clubs; then the clubs themselves are also entitled to take legal actions, as specified in the Explanatory Memorandum of Act 5/2015 of 30 April 2015.<sup>59</sup>

The situation is different where legislative provisions grant the audiovisual rights or their management exclusively to the sports event organisers (e.g. Italy, France, Spain, Greece). In these cases, sports event organisers, rather than the individual clubs, may act on the infringements of the audiovisual rights granted by the law. As mentioned, in Italy the law assigns a related right to the sports event organiser, while in France and Greece sports event organisers may bring a legal action on the basis of a generic exploitation right.

Broadcasters or producers (or a production company) are also entitled to take legal actions on different basis.<sup>60</sup> As stated, they are entitled to act for the protection of the related rights granted by the Rental and Lending Rights Directive and by the InfoSoc Directive in order to prohibit the fixation, the reproduction of the fixation and the rebroadcasting and communication to the public of their broadcasts by third parties, as well as for copyright infringement in the case of recording of sports events. The relationship with the organisers (e.g. sports leagues) does not affect the possibility of taking legal action, as long as they may act as owner of the copyright (in the case of audiovisual recordings) or of the related rights (in the case of fixation) or as licensees of these rights.<sup>61</sup>

As for the specific judicial remedies (*prima facie* proceedings, urgent proceedings, proceedings on the merits), they are granted to all the subjects listed above: thus, the entitlement to take legal action covers all the potential actions which are recognised by the national law. The same subjects, where owning a specific right and where allowed by the national laws, are also entitled to provide a notification to initiate a notice and take-down procedure.

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<sup>58</sup> Court of Appeal of The Hague, 31 May 2001 (*KNVB v. Feyenoord*); Hoge Raad, 23 May 2003, NJ 2003, 494 (*KNVB v. Feyenoord*).

<sup>59</sup> However, all the legal proceedings have been initiated by the *Liga Nacional de Fútbol Profesional* and the *Real Federación Española de Fútbol*, and by broadcasters.

<sup>60</sup> For the sake of completeness, one national expert reports that the entitlement to take legal action is granted also to copyright collecting societies (Sweden), while another (more correctly in our opinion) stands on the opinion that a collective management organisation is not entitled as broadcasting rights are not collectively managed (Czech Republic).

<sup>61</sup> See for instance Juzgado de lo Mercantil número 1 de A Coruña, 7 February 2017 and Court of Milan, 13 January 2016.

## 3.2. National remedies, enforcement rules and procedures

This section outlines the national remedies and enforcement rules, including procedures and case law. It is divided into five main topics in order to provide an overview of the different kinds of remedies applied: i) the legal qualification of the infringement, as an introduction to the remedies provided by the national law; ii) the specific national authorities and related competences; iii) notice and take-down procedures; iv) removal and blocking orders (injunctions) v) codes of conduct and MoU. All concepts will be defined and put into context.

### 3.2.1. Legal qualification of copyright infringement

Copyright infringement can be classified as a civil violation and/or a criminal offence. Sometimes copyright infringements are differentiated depending on whether they are committed for commercial purposes/for profit under national law.

#### 3.2.1.1. Criminal offences and civil violations

In most covered countries, copyright infringement consists in both civil and criminal violations. However, in some jurisdictions (Czech Republic, Latvia, Lithuania and Malta) criminal proceedings based on copyright infringement are not frequent.

Regarding criminal sanctions, in the majority of the covered countries (for instance Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, France, Luxembourg, Portugal, Spain, UK), imprisonment and fines are provided and ordered by the courts. An example of a criminal sanction is the Spanish one, where a fine of EUR 400 000 was issued to the web pages [www.exvagos.com](http://www.exvagos.com), [www.exvagos1.com](http://www.exvagos1.com) and [www.exvagos2.com](http://www.exvagos2.com) for a very serious infringement of the Law on Intellectual Property,<sup>62</sup> consisting in the resumption, on two or more occasions, of illegal activities of infringement of IP rights on the internet; the fine was issued in addition to the cessation of the activity.

On the other hand, in Croatia, , the punishment is only a monetary fine in cases of misdemeanours, while the sanction is imprisonment for up to three years for other criminal offences which include infringement of copyright or related rights.

In other countries, the criminal sanction is mostly represented by imprisonment. For instance, in the UK, criminal sanctions were tightened in 2017 from two years to ten

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<sup>62</sup> *Real Decreto Legislativo 1/1996, de 12 de abril, por el que se aprueba el texto refundido de la Ley de Propiedad Intelectual, regularizando, aclarando y armonizando las disposiciones legales vigentes sobre la materia:* <https://wipolex.wipo.int/en/legislation/details/20049>.

years' imprisonment, when Parliament increased the maximum sentence through the Digital Economy Act 2017, Section 32.<sup>63</sup>

Similarly, in Poland, the criminal penalty consists in imprisonment for up to three years in the case of: the manufacture of devices or their components used for unlawful removal or circumvention of effective technological measures preventing communication to the public; the recording or reproduction of works or objects of related rights or trades on such devices or their components; advertising them for sale or rental purposes.

However, in only three countries (Italy, Spain, UK) have the operators of infringing platforms and websites been imprisoned for massive copyright infringements of audiovisual rights, insofar as these operators were responsible for allowing them.

### 3.2.1.2. The notion of commercial purpose in copyright infringement

This paragraph summarises different legal rules on criminal offences committed for commercial purposes and/or acting for profit.

As regards the commercial purposes of the infringement and/or acting for profit, reference should be made to the concept of commercial scale infringement held by the IPRED (Articles 6(2), 8(1) and 9(2)). This notion is not defined by the IPRED, even if its Recital 14 states that acts “carried out for direct or indirect economic or commercial advantage, normally excluding acts carried out by end consumers acting in good faith” are included in this notion. Furthermore, according to the “Guidance on certain aspects of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights”, the concept of commercial scale:

*should be interpreted and applied taking into account qualitative elements, such as the economic or commercial advantage which may be pursued by the infringements in question, as well as quantitative elements, such as the number and extent of the infringements, which are relevant in the case at hand.*<sup>64</sup>

As for the “commercial purpose” in the covered countries, different definitions can be used for this notion, in particular: ii) financial gain; or ii) commercial scale.

Only in five of the covered countries do the national laws not differentiate the crimes depending on acting for profit (Bulgaria, Cyprus, Latvia, Poland, Romania). In all the other jurisdictions, there is a differentiation of crimes based on acting for profit, which generally has an impact on the severity of the criminal sanction.

In Austria, Belgium, Estonia, Finland, Germany, Ireland, Slovakia and Slovenia, where infringers have acted for profit, imprisonment and fines are the sanction provided

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<sup>63</sup> <https://www.legislation.gov.uk/ukpga/2017/30/section/32>.

<sup>64</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0708&rid=1>.

against them. In the Czech Republic, the damages are calculated based on the profit obtained. In Greece and Slovenia, the parameters of high market value, very high market value and commercial scale are considered in order to establish a higher sanction.

In Spain, the classification as a crime or misdemeanour is determined by the concurrence in the act of infringement of two circumstances: (i) the intention to obtain a direct or indirect economic benefit and (ii) whether the act is carried out “to the detriment of a third party”.<sup>65</sup>

According to German national law, an infringement is considered to have been committed for commercial purposes when it consists of a repeated infringement of rights with the aim of creating an income stream that is more than just temporary. Therefore, a single infringing act committed for profit does not amount to infringement committed on a commercial basis.

In Estonia, the Penal Code specifies certain criteria to define commercial purposes, for instance that the infringement is committed by means of a computer system in a professional and economic activity and the amount of gain is higher than the amount of 20 minimum daily rates of this economic activity.

In the case of infringement on a commercial scale, the penalty is greater. In Greece, if the gain sought from the copyright infringement – such as an illegal reproduction of a copyrighted work – is of particular economic relevance, the penalty shall be not less than two years’ imprisonment and a fine.<sup>66</sup> This sanction can be applied where the infringement is committed not only for financial gain, but also on a commercial scale. The term “commercial scale” in the context of a criminal offence, means that the perpetrator poses a serious threat to the protection of copyright or related rights.

### 3.2.2. Specific national bodies with competence in relation to copyright infringement

This section indicates whether the covered countries have specific bodies, other than judicial bodies, which are competent to enforce online copyright, specifying their roles and powers in relation to online copyright enforcement, also with reference, where existing, to the infringement of rights in sports events.

In some covered countries, administrative authorities have recently been created or empowered with specific competences in relation to copyright infringement and/or in the issuing of administrative blocking orders (France, Greece, Italy, Lithuania, Spain). Recourse to these bodies does not exclude the possibility of filing civil or criminal actions. However, in Italy and Greece, when a case has already been filed before an administrative

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<sup>65</sup> According to Article 270 of the Spanish Criminal Code, both conditions are necessary for the act to qualify as a crime.

<sup>66</sup> Article 66(3) of Law No. 2121/1993.

authority, the proceedings will be suspended by the courts until the case has been settled before the administrative authority.

In France, a new law was recently enacted on the regulation and protection of access to cultural works in the digital age,<sup>67</sup> which provides for the creation, from January 2022, of a new authority (ARCOM),<sup>68</sup> merging the former HADOPI<sup>69</sup> and the French audiovisual regulatory authority (CSA), with extended competences, notably in the fight against online piracy. In particular, ARCOM will be given competences to identify infringing websites and notify intermediaries for the purpose of blocking access, and to request search engines, directories and other indexing services to de-index infringing websites. In addition, ARCOM will have the power to extend courts' dynamic blocking orders to related domain names and mirror sites. The new law also foresees agreements between rightsholders and intermediaries to guarantee the enforcement of court decisions and the establishment of a "blacklist" of infringing websites. In the case of non-compliance, intermediaries may be exposed to further legal action.

The Italian Communications Authority (AGCOM) adopted resolution No. 680/13/CONS setting up a procedure on copyright infringements on electronic communications networks. AGCOM, in compliance with the criteria of graduality, proportionality and adequacy (Article 4) may order the selective removal of the infringing digital works or, in case of massive violations and if the servers are located outside the Italian territory, may order the ISPs to disable access to these servers.

In Greece, the Committee for the Notification of Copyright and Related Rights Infringement on the Internet (EDPPI)<sup>70</sup> is in charge of complaints concerning the infringement of IP rights committed on the internet. It has an alternative competence, in the sense that a precondition for examining an infringement is that the same case is not pending before the national courts. The EDPPI can issue its orders against ISPs (access and hosting providers) as well as against the operators of websites or platforms, but not against end-users.

In Estonia, the Copyright Committee, formed at the Patent Office,<sup>71</sup> works as a conciliatory body (out-of-court settlement, pursuant to Article 17 of the E-Commerce

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<sup>67</sup>Law No. 2021-1382 of 25 October 2021 on the regulation and protection of access to cultural works in the digital age (LOI n° 2021-1382 du 25 octobre 2021 relative à la régulation et à la protection de l'accès aux oeuvres culturelles à l'ère numérique), <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000043339178/>.

<sup>68</sup> Autorité de régulation de la communication audiovisuelle et numérique (Audiovisual and Digital Communication Regulatory Authority).

<sup>69</sup> The Hadopi (Haute autorité pour la diffusion des oeuvres et la protection des droits sur internet – High authority for the distribution of works and protection of rights on the internet) is an administrative body whose competences included, until recently, the protection against online copyright infringement and the regulation and identification of measures to protect IP rights.

<sup>70</sup> <https://opi.gr/en/committee>

<sup>71</sup> § 87. Copyright committee: (1) A copyright committee (hereinafter the committee) shall be formed at the Patent Office and the committee shall act in the capacity of an expert committee. The minister responsible for

Directive as transposed in § 87 of the Copyright Act) and therefore manages copyright and related rights disputes, although it has not been involved in sports broadcasting rights infringements. In Lithuania, the Lithuanian Radio and Television Commission is empowered to address extra judicial blocking injunctions for online infringements.

In Spain, the national body with competences in relation to infringement of copyright is the Second Section of the Intellectual Property Commission (IPC) (also referred to as the “Second Section”), an administrative body controlled by the Ministry of Culture. The function of the Second Section is to restore legality in the digital field with respect to cases of infringement of IP rights by the person(s) in charge of an information society service (ISS), provided that such a person – directly or indirectly – acts for profit or has caused or is likely to cause pecuniary damage to the holder of such rights. In these cases, the Second Section is entitled to issue blocking and removal orders, in the form of administrative injunctions.

In the other covered countries (Austria, Croatia, Cyprus, Czech Republic, Denmark, Finland, Germany, Hungary, Ireland, Luxembourg, Malta, Netherlands, Poland, Romania, Slovenia, Sweden, UK) there is no national body with competence in relation to copyright infringement other than the courts and judicial bodies.

The table below shows the covered countries where a specific national body holds specific competences in relation to copyright infringement.

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the area shall appoint the members of the committee for a period of five years.  
<https://www.riigiteataja.ee/en/eli/504032021006/consolide>

**Table 1. Specific national bodies with competence in relation to copyright infringement**

	Competent authority	Competences and roles
<b>AT</b>	No	No
<b>BE</b>	Flemish Media Regulator in the Flemish Community; High Council of Audiovisual Services in the French Community and Ombudsman in the French and German-speaking communities	Monitoring compliance with various obligations related to copyright and handling any complaints about governmental bodies
<b>BG</b>	Minister of Culture	Out-of-court dispute settlement, according to Article 98c of the Law on Copyright and Neighbouring Rights, according to L.331-12 to L.331-37 of the French Intellectual Property Code
<b>CY</b>	No	No
<b>CZ</b>	No	N/A
<b>DE</b>	No	No
<b>DK</b>	No	No
<b>EE</b>	Copyright Committee	Out-of-court dispute settlement, according to § 87 of the Copyright Act
<b>ES</b>	Second Section of the Intellectual Property Commission (IPC)	Blocking and removal orders (also in the form of administrative injunctions)
<b>FI</b>	No	No
<b>FR</b>	<i>Haute Autorité pour la diffusion des oeuvres et la protection des droits sur</i>	Identification and notification to infringing websites for the purpose of blocking access;



	Competent authority	Competences and roles
	<i>l'Internet</i> (HADOPI) ; From January 2022, ARCOM ( <i>Autorité de régulation de la communication audiovisuelle et numérique</i> )	requesting search engines and indexing services to de-index infringing websites; extending courts' dynamic blocking orders to related domain names and mirror sites; promoting the establishment of "blacklist" of infringing websites, between rightsholders and intermediaries.
<b>GR</b>	Committee for the Notification of Copyright and Related Rights Infringement on the Internet (EDPPI)	Examination of any complaint of infringement of copyright or related rights committed through the internet; ordering dynamic blocking injunctions
<b>HR</b>	No	No
<b>HU</b>	No	No
<b>IE</b>	No	No
<b>IT</b>	Italian Communications Authority (AGCOM)	Ordering the removal of digital works or, in the case of massive violations and if the servers are located outside the Italian territory, ordering ISPs to disable access to the servers
<b>LT</b>	Lithuanian Radio and Television Commission	Ordering of extra judicial blocking injunctions for online infringements
<b>LU</b>	No	No
<b>LV</b>	National Electronic Mass Media Council	Monitoring and controlling illegal retransmissions of audiovisual programmes
<b>MT</b>	No	No
<b>NL</b>	No	No



	Competent authority	Competences and roles
<b>PL</b>	No	No
<b>PT</b>	General Inspectorate of Cultural Activities (IGAC)	Imposition of administrative fines and confiscation of illegal works and related instruments
<b>RO</b>	No	No
<b>SE</b>	No	No
<b>SI</b>	No	No
<b>SK</b>	Minister of Culture, Minister of Finance and Telecommunications Office of the Slovak Republic and Council for Broadcasting and Retransmission	Ordering monetary sanctions, as provided by Act No. 220/2007 and Act. No. 308/2000
<b>UK</b>	No	No

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

### 3.2.3. Notice and take-down procedures

When the E-Commerce Directive was adopted, it was decided that the need for harmonising notice and take-down (NTD) provisions at the EU level would be assessed as part of the implementation reports of the Directive (see Article 21(2)). The Directive itself encourages the adoption of self-regulatory rules in this field (Article 16 and recital 40). The E-Commerce Directive (notably Article 14) has a horizontal application, and it has been widely used in cases of copyright infringement. The Directive does not impose an obligation to regulate NTD procedures. In the event, the absence of an obligation to introduce NTD measures has led to a strong fragmentation among the covered countries.

In fact, in some of the covered countries, NTD procedures are provided for at the legislative level (for example in Austria, Finland, Greece, Hungary, Italy, Luxembourg,

Malta, Netherlands, Romania, Slovakia, Sweden), while in others no statutory provisions have been made in this respect (for example in Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Ireland, Latvia, Lithuania, Poland, Portugal, UK).

For example, in Belgium, the requirements for NTD procedures are identified by the case law of the national courts. In the *Belgacom v. IFPI – Universal* case of 2001, the Brussels Court of Appeal established specific guidelines for copyright owners and ISPs. In particular, the notification must include at least the following information: (i) the claimant must notify the ISP about the existence of the infringing content; (ii) the reasons why, prima facie, the content is considered to be infringing or otherwise illegal; (iii) specific and detailed information in order to allow the ISP to identify the disputed content. The ISP should prove within three business days that the flagged content is legal, otherwise it must suspend it or restrict access to it. In the event that the content at issue is subsequently declared to have been legally posted, the claimant should accept liability, and hold the ISP harmless. The guidelines are commonly applied by the Belgian courts to determine the conditions under which an ISP may be held liable for the provision of its services to users and third parties.

In addition, in countries such as Estonia, Greece, Italy, Lithuania, or Spain, an administrative procedure has been implemented.

For instance, in Spain, the administrative procedure that has been introduced is based on Article 195 of the Intellectual Property Law and must be brought before the Second Section of the Intellectual Property Commission (IPC). According to this procedure, the prior notification, sent by the claimant to the ISP, should at least identify the exact protected work, the rightsholder and a URL where the work is made available to the public. If the ISP does not answer or does not remove the infringing content, then the Second Section of the IPC may adopt measures.

In Italy, an NTD procedure specifically devoted to copyright infringement was introduced by the above-mentioned Resolution No. 680/13/CONS of AGCOM<sup>72</sup> and entered into force on 1st April 2014. The notification made by the copyright holder should fully complete AGCOM's template otherwise it will be dismissed. Upon receiving the notification and analysing it, AGCOM opens a proceeding notifying the ISPs and, if known, the uploaders and editors of websites and web pages. ISPs and uploaders can submit a counter-notification within five days. The procedure cannot be undertaken if a lawsuit is pending between the same parties for the same issue before a court.

In Estonia, § 10 of the Information Society Services Act ("Restricted liability upon provision of information storage service") entitles the Estonian Copyright Protection Organisation (ECPO), following a notification by a copyright holder, to contact an ISP (generally a hosting provider) in order to remove illegal content within a specific deadline decided by the authority on a case-by-case basis.

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<sup>72</sup> However, the resolution is applicable to certain copyright works (audiovisual works) and to certain operators (providers of audiovisual media services).



For instance, in Germany, § 97a UrhG<sup>73</sup> lists the information that the injured party or its representative (e.g. a lawyer) must notify to the infringer (website or Internet platform) or to the hosting provider. The notification gives the infringer an opportunity to desist from the infringement and to settle the dispute. The notification shall a) state the name or company of the injured party if it is not the injured party but a representative who gives the notification, b) provide a precise description of the infringement, c) break down claims to payment asserted into claims for damages and claims for compensation, and d) if the notification contains a request to enter into an obligation to desist from infringement, it shall state to what extent the proposed obligation to desist from infringement goes beyond the notified infringement. All the conditions must be met. If the notification is addressed to a hosting provider, this provider must then forward the notification to the potential infringer who may respond and deny the allegation, in which case the complainant must provide additional evidence, as specified by the case law.<sup>74</sup>

Moreover, it is worth mentioning that in Germany and Estonia, the prior use of NTD procedures is a condition of admissibility for the filing of a judicial complaint.

On the other hand, in Finland, the procedure of removal without revealing the identity of the infringer, before the proceeding, is considered to be more efficient, because it would take too long to start civil proceedings.

Another procedure is that of French Law No. 2004-575 of June 21, 2004, on Confidence in the Digital Economy (*Loi pour la confiance dans l'économie numérique – LCEN*). According to Article 6-I-5 LCEN, the ISP is aware of the illegal nature of the content where it is notified with the following information: a full identification of the natural person or legal entity reporting the illegal content; a description of the illegal content, its location and, if relevant, the electronic address where the content can be accessed; the legal basis on which the illegal content should be removed or blocked; a copy of the message sent to the author or publisher of the illegal content or the request for its suspension.

Concerning the obligation to remove the illegal content, in Belgium, Poland and Slovenia, there is no general obligation for providers to monitor the information which they transmit or store, nor is there a general obligation to actively seek facts or circumstances indicating some illegal activity taking place. However, providers must promptly inform the competent public authority if they become aware of illegal content.

In France, Germany, Hungary, Romania and Sweden, on the other hand, the service provider has to remove or block the access to the content and is also obliged to stop the

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<sup>73</sup> Act on Copyright and Related Rights (Gesetz über Urheberrecht und verwandte Schutzrechte), <https://www.gesetze-im-internet.de/urhg/added>.

<sup>74</sup> BGH (German Federal High Court of Justice), decision of 25.11.2011 – VI ZR 93/10 - Blog-Eintrag, printed in GRUR (Gewerblicher Rechtsschutz und Urheberrecht) 2012, 331; BGH (German Federal High Court of Justice), decision of 17.08.2011 – I ZR 57/09 - Stiftparfüm, printed in GRUR (Gewerblicher Rechtsschutz und Urheberrecht) 2011, 1038.

infringement and prevent similar ones. In Hungary, the procedure provided by Article 13 of the Copyright Act<sup>75</sup> establishes that, within eight days of becoming aware of the infringement, the complaining party shall address the notification to the ISP, which is expected to remove the content “expeditiously”. The uploader of the content may submit a complaint and, in this case, the ISP is allowed to reinstate the content.

There are different ways to establish actual knowledge of the infringing activity for access and hosting providers. For instance, in Germany, § 10 of the Law on Telemedia Services (TMG) provides that actual knowledge and awareness of the illegal content is established when a sufficiently precise notification is given. In this respect, a judgment of 17 August 2011 of the German Federal High Court of Justice (BGH) held that a reference to copyright infringement is only worded specifically enough if the addressee of the notice can easily understand the legal infringement. In Lithuania, the service provider is considered to have acquired the knowledge only upon receiving a notification about the illegal conduct of users or the illegal content hosted on its servers.

In the UK, Section 191JA of the Copyright, Designs & Patents Act provides that the High Court shall have the power to grant an injunction against a service provider, if the service provider has actual knowledge of another person using their service to infringe copyright. In establishing actual knowledge, the court must evaluate all the elements and circumstances that appear to be relevant, including whether a notice has been received by the service provider; this notice must also include the details of the infringer.

In general, even when the law or administrative regulations do not make an explicit reference, from a jurisprudential perspective, the courts require the exact identification of the content, i.e. through the indication of the relevant URLs in order to establish actual knowledge. Some courts<sup>76</sup> have justified the necessary targeting of URLs by the proportionality principle, considering that, on the one hand, the ISP is expected to act without delay to ensure the protection of the copyright and the related rights of the claimants, while, on the other, the claimant (i.e. the copyright holders) must facilitate the search for infringing content.

As regards the entitlement to submit notifications, in the majority of the covered countries, the rightsholder is the party entitled to do so. However, in some covered countries, other parties are also entitled to do so, such as in Estonia (the Copyright Protection Organisation), in Romania (the national authority or any interested party), or in Spain (the Second Section of the Intellectual Property Commission). Moreover, in two of the covered countries, the rightsholder must prove that he/she is the person who is entitled to submit notification of the illegal content (Germany and Finland).

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<sup>75</sup> HCA (Act No. 76 of 1999 on Copyright Law/1999. évi LXXVI. törvény a szerzői jogról): <https://net.jogtar.hu/jogszabaly?docid=99900076.tv>.

<sup>76</sup> Court of Appeal Milan, 1 February 2015.

**Table 2. Notice and take-down procedures**

	Notice and take-down procedure	Entity entitled to submit notices	Conditions for the submission of notices	Effects of the notices
<b>AT</b>	Yes	Rightsholder	Notification must include the facts underlying the copyright and the type of copyright infringement	Cease-and-desist order
<b>BE</b>	Yes	Rightsholder	Notification to the service provider of the existence of the illegal content; proof, provided by the service provider, that the content is legal, on the contrary the provider must suspend or restrict access to it. In the case of audiovisual sports content, notification to the service provider of the infringement and a request for the prompt removal of the content	The suspension or restriction of access to the illegal content by the service provider
<b>BG</b>	No	No	No	No
<b>CY</b>	No	No	No	No



	Notice and take-down procedure	Entity entitled to submit notices	Conditions for the submission of notices	Effects of the notices
<b>CZ</b>	Yes	Rightsholder	Notification identifying precisely the content and the illegal nature of the same	To establish actual knowledge and the liability of the service provider, the ISP must examine the notification and respond to it. The service provider can remove the content or deny access to it, after the evaluation of the notification.
<b>DE</b>	Yes	Rightsholder	Evidence of the ownership of the rights  Notification identifying precisely the illegal nature of the content and providing evidence of it	The establishment of actual knowledge and liability of the provider. As soon as the service provider becomes aware, he or she has to act expeditiously to remove the information or disable the access to it.
<b>DK</b>	No	No	No	No
<b>EE</b>	Yes	ECPO (Estonian Copyright Protection Organisation)	Notification identifying precisely the illegal nature of the content and requesting the removal of the illegal content by the ISP	N/A
<b>ES</b>	Yes	Rightsholder – Second Section of the IPC	Notification identifying precisely the illegal nature of the content and requesting the removal of the illegal content by the ISS  A second complaint to	Measures adopted by the Second Section of the IPC in order to remove the content  In the event of non-compliance, a fine of between EUR 150 001 and EUR 600 000 will



	Notice and take-down procedure	Entity entitled to submit notices	Conditions for the submission of notices	Effects of the notices
			the Second Section of the IPC if the ISS has not answered	be issued.
FI	Yes	Rightsholder	<p>Notification shall include: (i) the name and contact information of the notifying party;</p> <p>(ii) an itemisation of the material, for which prevention of access is requested, and details of the location of the material;</p> <p>(iii) confirmation by the notifying party that the material which the request concerns is, in its sincere opinion, illegally accessible in the communications network;</p> <p>(iv) information concerning the fact that the notifying party has in vain submitted its request to the content provider or that the content provider could not be identified;</p> <p>(v) confirmation by the notifying party that he/she is the holder of copyright or related rights or entitled to act on behalf of the rightsholder;</p> <p>(vi) the signature of the notifying party.</p>	Prevention of access to the illegal content by the hosting service provider: if the service provider acknowledges that the prevention is not useful, the service provider must present a plea and it must include proof as to why the prevention was not applied..



	Notice and take-down procedure	Entity entitled to submit notices	Conditions for the submission of notices	Effects of the notices
<b>FR</b>	Yes	Rightsholder, beneficiary, user	<p>(i) full identification of the natural personal or the legal entity reporting the illegal content</p> <p>(ii) a description of the illegal content, its location, the electronic address where the content can be accessed</p> <p>(iii) the legal basis on which the unlawful content should be removed or blocked</p>	Blocking access to or removing the content
<b>GR</b>	Yes, in the case of live events	Rightsholder	<p>(i) a largescale violation of protected copyright and related rights on the internet through a national or global live and imminent transmission of the event</p> <p>(ii) specific URLs, IP addresses or domain names, that support the unauthorised subscription connection by any means and, in particular, by the use of passwords or of a decoder</p> <p>(iii) urgent need of preventing an immediate, serious and imminent danger or irreparable damage to the public interest or to the rightsholder</p>	Prevention of the broadcasting of illegal content and the order to block access to a website or a domain name for the whole duration of the event





	Notice and take-down procedure	Entity entitled to submit notices	Conditions for the submission of notices	Effects of the notices
<b>HR</b>	Yes	Rightsholder	Conditions specified in the terms and conditions of the platform	N/A
<b>HU</b>	Yes	Rightsholder	Notification to service provider in a private document precisely identifying the content of an illegal nature	The service provider must remove the illegal content at the request of the rightsholder.
<b>IE</b>	Yes	Rightsholder	Notification precisely identifying the content of an illegal nature	Civil liability
<b>IT</b>	Yes	Rightsholder	Reporting the infringement of copyrighted work to AGCOM, including the URLs where the content is found with sufficient details in order to ensure the provider's knowledge	Order to remove the illegal content; order to disable access to the relevant digital works in the case of massive infringements
<b>LT</b>	Yes	Rightsholder	No	No
<b>LU</b>	Yes	Rightsholder	Reporting the infringement of copyrighted work	The service provider is not obliged to remove the content. It is up to the plaintiff to prove having duly notified the intermediary of the infringement.
<b>LV</b>	Yes	Rightsholder	Principle of voluntariness	The service provider is not obliged to remove the content.



	Notice and take-down procedure	Entity entitled to submit notices	Conditions for the submission of notices	Effects of the notices
<b>MT</b>	Yes	Rightsholder	N/A	If legal action is taken, the liability of the intermediaries, including the online hosts is limited or removed.
<b>NL</b>	Yes	Rightsholder	N/A	Civil liability if the illegal content is not taken-down.
<b>PL</b>	Yes	Rightsholder	Conditions of a general notice	The service provider is free to decide if the notice is reliable or not and in consequence, remove or block the illegal content. The liability of the service provider is established according to his/her experience and previous activity in the field of hosting services.
<b>PT</b>	No	No	No	No
<b>RO</b>	Yes	National authority; interested person	Written complaint, reasons on which the complaint is based, date and signature	Removal of the illegal copyrighted work
<b>SE</b>	Yes	N/A	N/A	Removal of the illegal content, application of criminal sanctions, if the service provider fails to fulfil the obligation to remove the illegal content.



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	Notice and take-down procedure	Entity entitled to submit notices	Conditions for the submission of notices	Effects of the notices
<b>SI</b>	No	No	No	No
<b>SK</b>	Yes	Rightsholder	The conditions specified in the terms of the platform	Establishment of the actual knowledge and liability of the provider
<b>UK</b>	No	No	No	No

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

### 3.2.4. Permanent and interim injunctions

EU legislation provides specific enforcement measures to be used by rightsholders.

Article 8(3) of the InfoSoc Directive<sup>77</sup> provides for injunctions against ISPs if their services are used by a third party to infringe copyright or a related right. Recital 59 of the same directive states:

*Member States shall ensure that rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right.*

For the infringement of intellectual property rights, Article 11 of the IPRED<sup>78</sup> holds that competent judicial authorities can issue injunctions prohibiting the continuation of an infringement on the basis of a judicial decision. The injunctions may be addressed to both the direct infringers (websites or platforms) and the ISPs whose services are used by a third party in order to infringe the rights. Moreover, Article 9 of the IPRED holds that interlocutory injunctions are:

*intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by national law, the continuation of the alleged infringements...*

Finally, Article 14 of the E-Commerce Directive<sup>79</sup> holds that, in the case of hosting, ISPs are not liable if they do not have knowledge of the illegal activity or information and, as regards claims for damages, if they are not aware of facts or circumstances from which the illegal activity or information is apparent. In the event that the ISPs have actual knowledge of illegal activity or information, they are not liable if they act expeditiously to remove or to disable access to the information. Article 18 of the same directive adds:

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<sup>77</sup> 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:

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:en:HTML>.

<sup>78</sup> Directive (EU) 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004L0048R%2801%29>. “Member States shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Where provided for by national law, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance. Member States shall also ensure that rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right, without prejudice to Article 8(3) of Directive 2001/29/EC”.

<sup>79</sup> 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'): <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32000L0031>

*Member States shall ensure that court actions available under national law concerning information society services' activities allow for the rapid adoption of measures, including interim measures, designed to terminate any alleged infringement and to prevent any further impairment of the interests involved.*

The E-Commerce Directive is horizontal, and its provisions may be applied in general to all civil and criminal law violations including copyright or related rights infringements.

Injunctions may be divided into permanent injunctions and interim injunctions. Whereas permanent injunctions are issued after a proceeding on the merits, interim injunctions can be issued by a court without a full hearing on the merits of the case, because the rights or interests of the claimant could be irreparably and seriously harmed<sup>80</sup> by the duration of a proceeding on the merits.<sup>81</sup> The principal aim of interim injunctions is to prevent or limit further injury and irreparable harm caused by the infringement. In general, interim injunctions remain in force until the end of a proceeding on the merits. In some countries, parties asking for an interim injunction must demonstrate that the length of the full trial might jeopardise their ability to enforce their rights (e.g. Austria<sup>82</sup>, Denmark,<sup>83</sup> Italy<sup>84</sup>). In some cases, proof of the urgency by the plaintiff is not mandatory in order to obtain the interim injunction (Belgium,<sup>85</sup> Germany<sup>86</sup> Netherlands<sup>87</sup>).

In the case of urgent proceedings, provisional and precautionary measures may be ordered without the defendant having been heard (*ex parte* proceedings). In general, *ex parte* measures are taken at the request of the plaintiff (France, Finland, Italy, Romania), which is expected to provide a prima facie evidence (Germany, Italy, Luxembourg). The

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<sup>80</sup> Irish courts, in accordance with the leading case *Merck*, stand on the opinion that a preliminary injunction cannot be issued where the defendant is likely to suffer a greater irreparable damage by the granting of the injunction. *Merck Sharp & Dohme Corp v. Clonmel Healthcare Ltd*, [2019] IESC 65, <https://www.bailii.org/ie/cases/IESC/2019/S65.html>

<sup>81</sup> The Report of the European Parliament with recommendations to the Commission on challenges of sports events organizers in the digital environment of 2021 underlined the necessity of speeding up the procedures in the case of live broadcasting of sports events. In particular, the Report proposed a legislative modification of the EU legal framework in order to clarify that “acts expeditiously” set out in Article 14 of the E-Commerce Directive “is considered to mean immediately or as fast as possible and in any event no later than within 30 minutes of the receipt of the notification from rightholders”, without the necessity of any court order. Furthermore, the European Parliament also asked for a modification of the IPRED aimed at introducing “the possibility for the relevant judicial or administrative authority to issue injunctions requesting the real-time disabling of access to, or removal of, illegal online live sport events content” and at allowing the use of temporary blocking injunctions limited to the duration of the live broadcast.

<sup>82</sup> § 381 Executions order

<sup>83</sup> Section 413 of the Administration of Justice Act

<sup>84</sup> Article 700 Civil Procedure Code

<sup>85</sup> In Belgium this proof must be provided in the summary proceedings, while it is not required in the case of *stakingsvordering*, i.e. interim injunctions ordered by the judge at any stage of the trial during a proceeding on the merits.

<sup>86</sup> § 935 ZPO

<sup>87</sup> Article 254 Dutch Civil Procedure Code

preconditions for issuing these measures may differ in the individual jurisdictions. In Ireland, a high standard of evidence is required while, in other countries, a condition often applied by the courts is that the amount of copyrighted works infringed must be significant (Finland); this is occasionally calculated on the percentage of the works displayed on the website or platform (Netherlands). Furthermore, *ex parte* measures are considered to be exceptional.<sup>88</sup> The party which introduced the *ex parte* proceeding must commence proceedings leading to a decision on the merits within a certain deadline, otherwise the interim injunctions cease to have effect. The deadline can be set by the law (e.g. Belgium, Greece, Hungary) or by the court issuing the injunction (e.g. Czech Republic, Luxembourg, Slovenia). In this latter case, the deadline is usually 30 days. In some covered countries, the injunction is confirmed, without the necessity of a further proceeding on the merits, if it is not appealed by the defendant (Germany, Italy). In general, no damages can be claimed in urgent procedures aimed at issuing an interim injunction (e.g. Belgium, Italy, Luxembourg).

While no specific injunction procedures are provided by EU law that specifically relate to illegal live broadcasting, the following types of injunctions could be relevant: removal or blocking injunctions; dynamic injunctions; live blocking injunctions (which are a sub-category of the dynamic injunctions); de-indexing injunctions. These will be assessed in the following sections.

#### 3.2.4.1. Removal or blocking injunctions

Although EU legislation does not provide a specific definition, the term “blocking injunction” commonly and generally refers to injunctions which require intermediaries to block or disable access to the infringing content made available through a website or a platform by putting appropriate technical measures in place.

##### 3.2.4.1.1. The scope and criteria of blocking injunctions

In general, the addressees of blocking injunctions are access providers (or “innocent” ISPs, as they are not the direct infringers), as in all the covered European jurisdictions, it is not required that the lawsuit be brought jointly against the access providers and the alleged infringers. Furthermore, the notion of an ISP is interpreted by the CJEU in an extensive manner, including other operators such as hosting providers and domain name managers. As clarified in the CJEU’s *Telekabel* judgment, an ISP “is an intermediary whose services are used to infringe a copyright or related right within the meaning of Article 8(3) of [the

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<sup>88</sup> For instance, in Greece “extreme urgency” is required, while in Belgium the requirement is “absolute necessity”.

InfoSoc] Directive 2001/29”, without limiting the scope to the services provided by the intermediary.<sup>89</sup>

In one country (Finland), measures may be issued against ISPs only in the case of an unknown infringer (in which case the claimant must indicate the measures taken to identify the alleged infringer) or after suing the direct infringer.

As elaborated above, in Germany, a notification of the infringement must first be addressed to the “infringer” or “interferer” (*StörerIn*) (Internet platform or hosting service)<sup>90</sup> before legal proceedings are commenced and the latter has not acted expeditiously in order to remove the content in question or to block access to it and to ensure that such infringements do not recur. Only after this step may an injunction be issued by the court against the ISP.<sup>91</sup> In addition, pursuant to § 7 of the German TMG, access providers can be requested via a judicial order to block the access even if they are not considered liable for the infringing acts committed by the users. The prerequisite for demanding such a blocking injunction is that no other measures are practicable by the copyright or related rights holder in order to stop the infringement. The blocking must be reasonable and proportionate as held firstly by the case law<sup>92</sup> and then by the above-mentioned § 7(4) TMG. Furthermore, the actual infringement of an IP right is required – the potential for infringement is not sufficient on its own. In any case, German courts, when issuing blocking injunctions and considering their proportionality, take into account the constitutional rights of both access providers and users, and notably the right to freedom of speech and the freedom to conduct business. As mentioned below, proportionality is an open criterion assessed on a case-by-case basis. The aim of proportionality is to pragmatically ensure that the efficiency of the measure has a limited impact on any conflicting rights (such as those of users).

In some jurisdictions these blocking injunctions are *ex parte* injunctions, i.e. injunctions are rendered *inaudita altera parte* (without the other party being heard), without the direct infringer or ISP being sued (e.g. Malta, Netherlands). Some courts (Italy, UK) have also specified that the joinder of parties, involving the operator of the website

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<sup>89</sup> Paragraph 32:

<https://curia.europa.eu/juris/document/document.jsf?jsessionid=BF89E107122488F5A14F44EF6432D646?text=&docid=149924&pageIndex=0&doclang=it&mode=lst&dir=&occ=first&part=1&cid=22471161>

<sup>90</sup> The condition for issuing the injunction to have sent the notice to the ISP and that the ISP has not acted expeditiously to issue the injunction refers to the intermediary (and not to the direct infringer/perpetrator, for whom this condition does not apply).

<sup>91</sup> In the *Cyando* case, the CJEU has clarified that Article 14(3) of the E-Commerce Directive allows member states to establish procedures governing the removal of illegal information or the disabling of access to such information: “(...) while Member States are required, under Article 8(3) of the Copyright Directive, to guarantee to rightholders covered by that directive a legal remedy against providers whose services are used by third parties to infringe those rights, Member States may, however, provide for a procedure which precedes the exercise of that legal remedy, which takes into account of the fact that, in accordance with Article 14(1) of the Directive on Electronic Commerce, the service provider concerned is not liable for the infringement in question.” See CJEU Joined Cases C-682/18 and C6683/18, and 132 and following: <https://curia.europa.eu/juris/liste.jsf?num=C-682/18>.

<sup>92</sup> German Federal High Court of Justice

or of the platform and the ISPs (access and hosting provider) is not mandatory and that this allows complainants to decide to sue just the ISPs without involving the direct copyright infringer.<sup>93</sup> These decisions considered that neither Article 8(3) of the InfoSoc Directive (nor Section 97A in the UK case) require the joinder of the third-party infringer and Article 12 of the E-Commerce Directive provides orders directed exclusively to access providers.

Furthermore, the measures adopted against ISPs depend on the type of activity they carry out. In fact, in the case of mere conduit/access provision, the courts generally order the blocking of IP addresses or the blocking of certain URLs that are indicated by the claimants, while in case of websites or platforms hosting third-party content (i.e. hyperlinks leading to other web resources allowing access to unauthorised sports event broadcasting), the removal of the infringing content is ordered.

In the case law, as has been said, the most frequent injunctions involved the blocking of IP addresses and were ordered against access providers. For instance, in a case involving a famous Spanish-based platform hosting hyperlinks which redirected users to other websites broadcasting unauthorised sports events, Spanish<sup>94</sup> and Italian<sup>95</sup> courts issued similar injunctions, ordering the ISPs providing access to users to block the website (the same website in both cases), until the website itself proved to the courts that it had complied with the orders given to the owner of the website and thus had removed the infringing hyperlinks.

The analysis of the replies to the questionnaires reveals that, if the law does not require the adoption of a specific measure, the national courts apply blocking orders indifferently against IP addresses and Domain Name Systems (DNS), often jointly.<sup>96</sup> A Belgian court stated that DNS blocking was the most acceptable solution, excluding the application of IP blocking. According to the court, in addition to the fact that the IP address blocking technique requires more investment, it entails the risk of blocking all the internet sites grouped under the same IP address and thus making perfectly legal and lawful information inaccessible at the same time. This seems, however, to be an isolated statement, specific to the circumstances of the case.<sup>97</sup>

In Luxembourg, however, judges are not entitled to choose the technical measures to be taken; these must be chosen by the defendant (similarly in Austria) and be appropriate to the request of the court.

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<sup>93</sup> *Dramatico Entertainment Ltd. v. British Sky Broadcasting Ltd* [2012] EWHC 268 (Ch) (20 February 2012); Court of Milan, 12 April 2018, R.G. 2017/51624: <https://www.medialaws.eu/wp-content/uploads/2018/10/Ord.-Milano12042018.pdf>

<sup>94</sup> Juzgado de lo Mercantil número 1 de A Coruña, 7 February 2017.

<sup>95</sup> Court of Milan, 13 January 2016.

<sup>96</sup> See for instance Court of Milan, court orders 30 January 2019, No. 3874/2019 and 4 March 2019, No. 8692/2019.

<sup>97</sup> Antwerp Court of Appeal, 26<sup>th</sup> September 2011



According to the NTD special procedure established by Article 66E of the Greek Copyright Law,<sup>98</sup> the Committee for the Notification of Copyright and Related Rights Infringement on the Internet (EDPPI) may, at the request of the rightsholder, order the removal of the infringing content, the blocking of access to this content or any other measures deemed appropriate aimed at the discontinuation of the infringement or at its prevention. In addition, Article 66E(10A) of the Greek Copyright Law provides for a swift procedure, according to which the EDPPI may apply the immediate (live) blocking of either specific URLs, IP addresses or domain names. It is noteworthy that this procedure results exclusively in blocking access to the content, not in removing it. Furthermore, this blocking is allowed under certain specific conditions, the main one being that the infringement of protected copyright and related rights is occurring on a large scale. The other major condition is the need for urgent prevention of an immediate, serious and imminent danger of irreparable damage to the public interest or to the rightsholder.

In the Netherlands, judges are free to choose the most appropriate measures as long as these measures are proportionate to the illegal act. Therefore, as noted, blocking injunctions may be issued exclusively where the percentage of illegal content is higher than that of the legitimately and lawfully displayed content.

#### 3.2.4.1.2. The principle of proportionality

The principle of proportionality has its basis in Article 5(4) of the Treaty on European Union and in Article 52(1) of the Charter of Fundamental Rights of the European Union, where the term is used in order to signal the need for balance in the case of competing rights (e.g. copyright and free speech; copyright and data protection). This principle also features in the EU copyright “*acquis*”. As mentioned above, Recital (58) and Article 8 (1) of the InfoSoc Directive and Article 3 of the IPRED state that the sanctions provided for copyright infringements should be effective, proportionate and dissuasive. The proportionality of the measures is therefore frequently required by both the courts (e.g. Germany, Ireland,<sup>99</sup> Sweden<sup>100</sup>) and the national legislation (e.g. Germany, Spain<sup>101</sup>) in relation to all types of injunctions. It requires a case-by-case analysis.

This principle was invoked, for instance, in a decision of the Swedish Patent and Market Court, where the copyright holders brought an action against an access provider aimed at blocking users’ access to websites where protected content was made

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<sup>98</sup> This procedure aims at facilitating the prevention of illegal broadcasting of events of national or global viewing (e.g. sports events), but it can also be applied for clones of the original site that appear in a new IP address or URL or domain name, if it is actually hosting the same content.

<sup>99</sup> *Sony Music Entertainment (Ireland) and Others v. UPC Communications Ireland Ltd.*, [2016] IECA 231 <https://www.casemine.com/judgement/uk/5da0480a4653d07b2518fd30>.

<sup>100</sup> See next paragraph.

<sup>101</sup> Article 22 RD 1889/2011 of 30 December 2011, which regulates the operation of the Intellectual Property Commission.

available.<sup>102</sup> In this case, the court issued a dynamic injunction stating that intermediaries may be obliged to take actions to prevent copyright infringements and that this measure was proportionate to the freedom to conduct business of the access provider. Similarly, in the Netherlands, in the *Ecatel* case the High Court stated that the live blocking order issued was proportionate to the freedom to conduct business of the hosting provider.

Another example of applying the principle of proportionality can be found in the *FAPL v. BT* case.<sup>103</sup> In this case, the UK court stated that the orders sought by the claimants did not impair the freedom to conduct business of ISPs, in as much as these orders would not interfere with the provision by the defendants of their services to their customers and the orders would not require the defendants to acquire new technology.<sup>104</sup> Furthermore, the court considered that the claimants (both the organiser of the event and the licensees of the audiovisual rights) had a legitimate interest in curtailing copyright infringements, and, considering their role in supporting sport in the UK, there was a public interest in combating infringements of their rights. Finally, as for the freedom of internet users to impart or receive information, this “plainly does not extend to a right to engage in copyright infringement”,<sup>105</sup> and, considering that the websites involved in the order “appear to be exclusively, or almost exclusively, engaged in infringing activity, at least during the periods in which the Order will take effect, the operators have no right which requires protection”.<sup>106</sup>

However, an interesting issue which has not been thoroughly explored by national courts is whether the costs of implementing the measures included in the blocking orders may be allocated to ISPs and to what extent this choice is in line with the proportionality principle. The French Court of Cassation, in a case not directly related to sports event broadcasting, concluded that the E-Commerce Directive and the InfoSoc Directive do not preclude that the cost of these measures may be borne by ISPs, despite their non-liability:

*access and hosting providers are legally compelled to contribute to the fight against illegal content and, more specifically, against infringement of copyright and related, if these intermediaries are in the best position to put an end to these infringements.*<sup>107</sup>

In contrast, in one Italian decision, the court stated that the costs of the technical measures to be adopted by the ISPs, considering the balance of the interests, should be borne by the claimants.<sup>108</sup> In the Irish case, *Sony Music Entertainment Ireland Ltd and Others v. UPC Communications Ireland Ltd*, the court stated that one of the criteria for an

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<sup>102</sup> Swedish Patent and Market Court, 9 December 2019, Case No. PMT 7262-18:

<https://www.domstol.se/patent--och-marknadsdomstolen/>.

<sup>103</sup> FA Premier League v BT [2017] EWHC 480 (Ch): <https://www.bailii.org/ew/cases/EWHC/Ch/2017/480.html>.

<sup>104</sup> Paragraph 46.

<sup>105</sup> Paragraph 47.

<sup>106</sup> *Ibidem*.

<sup>107</sup> Court of Cassation, 6 July 2017, No. 909.

[https://www.courdecassation.fr/jurisprudence\\_2/premiere\\_chambre\\_civile\\_568/909\\_6\\_37275.html](https://www.courdecassation.fr/jurisprudence_2/premiere_chambre_civile_568/909_6_37275.html).

<sup>108</sup> Court of Milan, 11 June 2018,

[https://drive.google.com/drive/folders/1Orx5\\_B07TCpBe2lPs5\\_UJYbshp2GtETH](https://drive.google.com/drive/folders/1Orx5_B07TCpBe2lPs5_UJYbshp2GtETH).

injunction against an ISP is that the costs involved were not excessive or disproportionate and that the order itself should not be unduly complicated.<sup>109</sup>

Finally, although some legislations do provide measures against end-users or, at least, general measures are applicable also towards these subjects (e.g. Austria, Cyprus, Hungary, Romania, Slovenia), they are reported in the replies to the questionnaire by some national experts as being rare (e.g. Austria, Germany). In general, these measures have not been applied by the courts against end-users but only against those subjects (websites or platform operators) who are engaged in direct lucrative activity, through massive infringements that cause economic damage to copyright owners, usually resulting in activities carried out for profit (i.e. operators of platforms, websites and other internet services) (e.g. Italy, Spain). In the UK, the Digital Economy Act 2010 included provisions on limiting internet access for end-users, through new legal duties for ISPs.<sup>110</sup> The regulatory body designed to limit internet access for end-users was Ofcom. This legislation went further than non-statutory arrangements between rightsholders and ISPs, which were focused on warning letters rather than suspension/blocking. However, the law has never been executed. In one case regarding a peer-to-peer (P2P) platform used for sharing copyrighted content, the Portuguese Court of Intellectual Property deemed the measure of the blocking of IP addresses of end-users of the platform was disproportionate and excessive in the light of the protection of other fundamental rights of the individuals.<sup>111</sup>

**Table 3. Blocking injunctions**

	Removal and blocking orders	Competent authority to issue the removal and blocking orders	Legal basis for the removal and blocking orders
<b>AT</b>	Removal and blocking orders (preliminary or temporary injunctions)	Courts	§ 87 UrhG, paragraph 3 of the Austrian Injunction and Enforcement Statute
<b>BE</b>	Removal and blocking orders (permanent and interim injunctions; blocking injunctions against ISPs; online marketplaces; transport, shipping agents)	Courts	Article 19 and 584 of the Judicial Code and Article XI.291 ELC; Article XVII.14(3) ELC; Article XI.334(2) ELC

<sup>109</sup> *Sony Music Entertainment Ireland Ltd and Others v. UPC Communications Ireland Ltd* [2016] IECA 231

<sup>110</sup> Sections 3-16, inserting new sections 124A-N into the Communications Act 2003: <https://www.legislation.gov.uk/ukpga/2010/24/contents>.

<sup>111</sup> <https://link.springer.com/article/10.1007/s40319-016-0479-4>



	Removal and blocking orders	Competent authority to issue the removal and blocking orders	Legal basis for the removal and blocking orders
<b>BG</b>	Not mentioned in national law; never applied	Not mentioned in national law; never applied	Not mentioned in national law; never applied
<b>CY</b>	Removal and blocking orders/injunctions	Courts	Article 13(5) of Law No. 59/1976 – Civil procedure rules at the discretion of courts – Article 32 of the Courts of Justice Law No. 14/60.
<b>CZ</b>	Removal and blocking orders (preliminary measures; interlocutory injunctions)	Courts	General civil procedure laws (Section 74 et seq. of the Civil Procedure Code and Section 40 (1) (f) of the Copyright Act
<b>DE</b>	Removal and blocking orders/injunctions	Courts (German High Federal Court)	Code of Civil Procedure (§ 935 ZPO) and § 7 Section 4 TMG
<b>DK</b>	Removal and blocking orders (interlocutory injunctions; Prohibitory or mandatory injunctions)	Courts	Sections 413-414 of the Administration of Justice Act
<b>EE</b>	Provisional and precautionary measures	Courts	§§ 377-378 of the Code of Civil Procedure on securing action and § 56 of the Gambling Act
<b>ES</b>	Removal and blocking orders/injunctions	Courts, Criminal Courts and Second Section of the IPC and Commercial Court	Articles 138 and 195.5 of the LPI
<b>FI</b>	Removal and blocking orders (prohibition against infringement; claim for an injunction; discontinuation order; interim discontinuation order; blocking order)	Courts	Sections 56g, 60b, 60c, 60d and 60e of the Copyright Act
<b>FR</b>	Removal and blocking	Courts – (HADOPI)	Article L. 336-2 of the Intellectual



	Removal and blocking orders	Competent authority to issue the removal and blocking orders	Legal basis for the removal and blocking orders
	orders	Commission for the protection of rights)	Property Code and Article 6-1 of Law No. 575 of 21 June 2004
<b>GR</b>	Removal and blocking orders	Courts and Committee for the Notification of Copyright and Related Rights Infringement on the Internet (EDPPI)	Article 64A of Law No 2121/1993 on copyright and related rights
<b>HR</b>	Removal and blocking orders (preliminary injunctions)	Courts	Articles 177 and 185 of the Copyright Act and Article 22 of the Electronic Commerce Act
<b>HU</b>	Removal and blocking orders	Courts and Court of Appeal	Article 94/A of the HCA
<b>IE</b>	Removal and blocking orders (blocking injunctions; interlocutory injunctions)	High Court	Sections 40 5(A) of 2000 Act
<b>IT</b>	Removal and blocking orders (interim injunctions)	Courts – AGCOM	Articles 78- <i>quater</i> , 156 and 163 of the Copyright Law
<b>LT</b>	Removal and blocking orders/injunctions (also extrajudicial blocking injunctions)	Courts; Lithuanian Radio and Television Commission	Articles 78 and 81 of the Law on copyright and related rights
<b>LU</b>	Removal and blocking orders/injunctions	Courts	Articles 76 and 81 of the Copyright Law
<b>LV</b>	Removal and blocking orders (preliminary injunctions and injunctions in proceedings on the	Courts	Chapter 30 of the Civil procedure law – Sections 250.11 and 250.12 of the Civil Procedure Law; Section 691 (7) of the Copyright Law



	Removal and blocking orders	Competent authority to issue the removal and blocking orders	Legal basis for the removal and blocking orders
	merits)		
<b>MT</b>	Removal and blocking orders (preliminary measures and proceedings on the merits; provisional and prohibitive injunctions)	Courts	Article 873 (1) of the Maltese Code of Organisation and Civil procedure
<b>NL</b>	Removal and blocking orders	Courts	Articles 26 d and 254 of the Dutch Code on Civil Procedure
<b>PL</b>	Removal and blocking orders	Courts	Article 79 (1) of the Polish Copyright Act and Code of Civil Procedure
<b>PT</b>	Removal and blocking orders	Courts – National Telecommunications Authority (ANACOM)	Article 210-G of the Copyright and Related Rights Code
<b>RO</b>	Removal and blocking orders (interlocutory measures)	Courts	Article 188(3) of Law No. 8/1996
<b>SE</b>	Removal and blocking orders (interim and temporary injunctions)	Courts	Articles 53 b and 57 of the Copyright Act
<b>SI</b>	Removal and blocking orders (interim injunctions)	Courts	Articles 5 to 8 of the Act on Conditional Access Protected Electronic Services
<b>SK</b>	Removal and blocking orders (blocking injunctions; financial deposits)	Courts	Article 341 (1) of Act No. 160/2015 of the Civil Proceedings Code for adversarial proceedings
<b>UK</b>	Removal and blocking	Courts	Sections 96 and 97A of the 1988



	Removal and blocking orders	Competent authority to issue the removal and blocking orders	Legal basis for the removal and blocking orders
	orders		Act

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire

### 3.2.4.2. Dynamic injunctions

Dynamic injunctions are defined by the EU Commission in its Guidance on certain aspects of Directive 2004/48/EC of 2017 as:

*injunctions which can be issued for instance in cases in which materially the same website becomes available immediately after issuing the injunction with a different IP address or URL and which is drafted in a way that allows to also cover the new IP address or URL without the need for a new judicial procedure to obtain a new injunction.<sup>112</sup>*

These injunctions are more flexible with regard to repeated infringements (which are frequent in the case of infringement of sports broadcasting rights) and may ensure the effectiveness of the measures taken for rightsholders.

In general, the CJEU has clarified in the *Telekabel* case that blanket injunctions are not contrary to EU law. In fact, as the court stated:

*the fundamental rights recognised by EU law must be interpreted as not precluding a court injunction prohibiting an internet service provider from allowing its customers access to a website placing protected subject-matter online without the agreement of the rightholders when that injunction does not specify the measures which that access provider must take and when that access provider can avoid incurring coercive penalties for breach of that injunction by showing that it has taken all reasonable measures, provided that (i) the measures taken do not unnecessarily deprive internet users of the possibility of lawfully accessing the information available and (ii) that those measures have the effect of preventing unauthorised access to the protected subject-matter or, at least, of making it difficult to achieve and of seriously discouraging internet users who are using the services of the addressee of that injunction from accessing the subject-matter that has been made*

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<sup>112</sup> Communication from the Commission to the Institutions on Guidance on certain aspects of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights, <https://ec.europa.eu/docsroom/documents/26582>.

*available to them in breach of the intellectual property right, that being a matter for the national authorities and courts to establish.*<sup>113</sup>

Moreover, the compatibility of dynamic injunctions with EU law has been confirmed by the CJEU. In the *Mc Fadden* case, the CJEU pointed out that Article 12 of the E-Commerce Directive:

*does not preclude such a person from claiming injunctive relief against the continuation of that infringement and the payment of the costs of giving formal notice and court costs from a communication network access provider whose services were used in that infringement where such claims are made for the purposes of obtaining, or follow the grant of injunctive relief by a national authority or court to prevent that service provider from allowing the infringement to continue.*<sup>114</sup>

In Italy, the Court of Milan rendered a decision – not related to sports content – following an interim injunction that ordered some Italian access providers to block access to a specific domain name. The court, deciding on the merits of the case, ordered a dynamic injunction, not limited to a single domain name. This measure was considered compatible with the prohibition of general monitoring obligations, proportionate and at the same time effective. It consisted in ordering ISPs to prevent access to the same content, already found to be illegal, regardless of the domain name, which kept changing due to the deliberate will of the defendant to continue the violation. According to the court, a different order limited to a specific domain name would be ineffective against the so-called mirror websites.<sup>115</sup>

The Commercial Court of Madrid (No. 7 of 11 February 2020), in a lawsuit introduced by Telefónica Audiovisual Digital S.L.U. (the licensee of the audiovisual rights on live football events), ordered nine internet access providers to block illegal access to several web pages that made available to the public broadcasts and retransmissions of soccer matches without authorisation from the rightsholders.<sup>116</sup> The blocking order involved 44 websites to be blocked by the access providers within 72 hours and ISPs were ordered to block any new websites (with a different domain name) within three hours of the notification by the claimant party (which had to send the ISPs an updated list with the URLs of the new websites) and to notify the claimant of the exact time when they blocked

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<sup>113</sup> *Telekabel*, paragraph 40:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=149924&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=22473745>.

<sup>114</sup> *Tobias Mc Fadden v. Sony Music Entertainment Germany GmbH*, C-484/14, EU:C:2016:689 (*Mc Fadden*), paragraph 79.

<sup>115</sup> Court of Milan, 12 April 2018, R.G. 2017/51624:

<https://www.medialaws.eu/wp-content/uploads/2018/10/Ord.-Milano12042018.pdf>. More recently, the same court issued similar blocking orders, extending them to all the IP addresses and any top-level domain names used to access to the same IPTV services; see Court of Milan, 30 January 2019, R.G. 2019/3874 and Court of Milan, 4 March 2019, R.G. 8692/2019.

<sup>116</sup> <http://www.poderjudicial.es/search/AN/openDocument/d1ecc270d29d6605/20200219>.



access to the newly added web resources. The court listed the names of the websites, but also their IP addresses and their URLs, extending the blocking order to URLs, DNS, IP addresses, and via access in HTTP and HTTPS protocols. Access providers were also ordered to notify the owner of the sports broadcasting rights of the effective execution of the blocking measures, identifying all blocked web resources (URLs, DNS, IP addresses) and HTTP and HTTPS protocols, and the day, hour and minute of execution of the block on each web resource. Furthermore, the blocking order will be enforceable until 25 May 2022, covering the following three seasons of La Liga (the Spanish national football competition). A similar measure was held by the Court of A Coruña, in a case dated 2017, in which ISPs were ordered to block users' access to a specific website containing hyperlinks to other websites broadcasting unauthorised sports events, and to or any other web page that the website editor might use in the same terms, or that redirects to said website.

In Sweden, the case law has adopted an approach which is very favourable to copyright holders as the dynamic injunctions are not limited to a list of URLs notified before the trial or in a subsequent time period, fixed by the court, but are extended to services which have specific characteristics. The Swedish Patent and Market Court has issued dynamic injunctions since 2018. In its first decision the court ordered the ISPs to “take reasonable steps” to prevent access to URLs and websites “whose sole purpose is to provide access to said illegal file-sharing services”, not only on the listed URLs, domain names and web addresses.<sup>117</sup> The characteristics of the targeted services which are included in the blocking orders are analytically described by the court in a five-page annex. The duration of the order was fixed for three years. In another decision issued on 26 June 2020, the Patent and Market Court pointed out that the “characteristics, structure and function” of the target services must thus be clearly defined and taken into account, although the definition of these aspects was less analytic than in the previous case.<sup>118</sup>

In France, the recently-adopted law on the regulation and protection of access to cultural works in the digital age introduce into legislation the possibility of using dynamic injunctions for holders of broadcasting rights. According to this bill, as soon as a blocking order becomes final, a new administrative authority (ARCOM), upon notification, will be empowered to extend courts' dynamic blocking orders to related domain names and mirror sites.<sup>119</sup> The order shall last up to 12 months and shall impose the blocking or de-listing of URLs, implemented according to a timetable modelled on the calendar of the sports events.

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<sup>117</sup> Patent and Market Court, case PMT 7262-18. The decision has been reviewed by the Svea Court of Appeal, Case No. PMO 9945-18, 1 February 2019:

[https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/New\\_Case\\_Law\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/New_Case_Law_en.pdf).

<sup>118</sup><https://www.domstol.se/globalassets/filer/domstol/patentochmarknadsoverdomstolen/avgoranden/2020/pmt-13399-19.pdf>.

<sup>119</sup> <http://www.senat.fr/rap/l20-557/l20-5576.html>.

The duration of the orders is different for each individual country. As already stated, the national legislation of the covered countries does not regulate the content of the injunctions, and thus their duration, which is generally decided by the judges on a case-by-case basis. The analysis of the case law also shows significant differences even in the same jurisdictions, as in the UK, where the court of the FAPL and UEFA limited its order to one year (or, more correctly, to one season),<sup>120</sup> while the *Matchroom* injunctions last for two years.<sup>121</sup>

**Table 4. Dynamic injunctions**

	Dynamic injunctions	Character and scope of the dynamic injunctions	Duration of the dynamic injunctions	Implementation of the dynamic injunctions
<b>AT</b>	Yes	N/A	N/A	The concept of dynamic injunctions is interpreted widely.
<b>BE</b>	Yes	Blocking of domain names	Case-by-case basis	Measures imposed by the court, in respect of Article 6 of the Judicial Code
<b>BG</b>	No	No	No	No
<b>CY</b>	No	No	No	No
<b>CZ</b>	No	No	No	No
<b>DE</b>	Yes	Preventing future infringement	N/A	When an infringement is likely to occur, a dynamic blocking injunction can be applied.
<b>DK</b>	Yes	Blocking the other domains which	N/A	The blocking can be extended to other websites if the

<sup>120</sup> *British Telecommunications Plc, EE Limited, Plusnet Plc, Sky Uk Limited, Talk Talk Telecom Limited, Virgin Media Limited* (see *FAPL v. BT and Others I* – [2017] EWHC 480 (Ch); *FAPL v. BT and Others II* – [2018] EWHC 1828 (Ch); *UEFA v. BT and Others* – [2017] EWHC 3414 (Ch)).

<sup>121</sup> *Matchroom Boxing Ltd and another v. British Telecommunications plc and Others* [2020] EWHC 2868 (Ch): <https://www.bailii.org/ew/cases/EWHC/Ch/2020/2868.html>.

	Dynamic injunctions	Character and scope of the dynamic injunctions	Duration of the dynamic injunctions	Implementation of the dynamic injunctions
		provide access to the same internet		infringing site changes its domain name.
<b>EE</b>	No	No	No	No
<b>ES</b>	Yes	Blocking of websites	Case-by-case basis	Access providers are ordered to block access to the websites, notifying the rightsholder that they have implemented these measures.
<b>FI</b>	No	No	No	No
<b>FR</b>	Yes	Under a notification, the blocking of the access to the websites	12 months	Blocking and de-indexing of URLs, implemented according to a timetable modelled on the calendar
<b>GR</b>	Yes	Blocking of websites	Case-by-case basis	The claimant has to pay a fee. For each day of non-compliance, a fine can be imposed.
<b>HR</b>	No	No	No	No
<b>HU</b>	No	No	No	No
<b>IE</b>	Yes	N/A	N/A	A plaintiff can notify the defendants of other related domain names, IP addresses and URLs that must be blocked.
<b>IT</b>	Yes	Blocking of websites	Case-by-case basis	The Italian courts apply the blocking orders on the basis of Article 156



	Dynamic injunctions	Character and scope of the dynamic injunctions	Duration of the dynamic injunctions	Implementation of the dynamic injunctions
				and Article 163 of the Copyright Law.
<b>LT</b>	No	No	No	Courts do not allow dynamic injunctions if the redirect and mirror websites are not expressly specified.
<b>LU</b>	No	No	No	No
<b>LV</b>	No	No	No	No
<b>MT</b>	No	No	No	No
<b>NL</b>	Yes	Blocking of websites	Case-by-case basis	Sought by rightsholder in <i>ex parte</i> procedure or in summary proceedings.
<b>PL</b>	No	No	No	No
<b>PT</b>	Yes	Blocking of websites	Case-by-case basis	ISPs block access to websites after an evidence-based investigation following a request from the plaintiff.
<b>RO</b>	No	No	No	No
<b>SE</b>	Yes	Blocking of websites and URLs	Case-by-case basis	The measures are also extended to services with the same characteristics.
<b>SI</b>	No	No	No	No
<b>SK</b>	No	No	No	No

	Dynamic injunctions	Character and scope of the dynamic injunctions	Duration of the dynamic injunctions	Implementation of the dynamic injunctions
UK	Yes	Blocking of websites	Case-by-case basis	A dynamic injunction is applicable only when, after a broadcast of a live event, the fixtures will remain available for weeks.

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire

### 3.2.4.3. Live blocking injunctions

A live blocking injunction consists of an order aimed at blocking the illegal broadcasting of a real-time event. At the time of writing, live blocking injunctions have mainly been applied in the common law area (Ireland and the UK), the Netherlands, Spain and Portugal. Live blocking injunctions have rarely been applied by the courts even if they seem an appropriate remedy for the unauthorised retransmission of live sports events.

An example of the application of live blocking injunctions is offered by the UK precedent *FAPL v. BT*, in which two technological aspects could significantly and positively affect the application of live blocking orders. On the rightsholders' side the existence of video monitoring technologies used by the FAPL allows the identification of infringing streams with a very high level of accuracy close to the real-time event;<sup>122</sup> this can be used in close to real time during events. On the ISPs' side, blocking systems allow them to block and unblock IP addresses during the course of an event by means of what is often automated technology.

UK courts have widely applied live injunctions, notably in the cases in which the FAPL and UEFA brought actions against UK telecom operators (access providers).<sup>123</sup> In these cases, the blocking orders were not addressed to specific websites, but covered specific servers from which the illegal activity was conducted and the corresponding IP addresses. Furthermore, the court empowered the FAPL with the possibility of notifying each ISP on a weekly basis of the revised list of target servers to be blocked. These orders are limited in time as they cover only one league season, although they can be extended for the following league seasons. The courts also stated that the live blocking orders were not unduly complicated or costly and that no other equally effective but less expensive

<sup>122</sup> <http://www.bailii.org/ew/cases/EWHC/Ch/2017/480.html>.

<sup>123</sup> British Telecommunications Plc, EE Limited, Plusnet Plc, Sky Uk Limited, Talk Talk Telecom Limited, Virgin Media Limited (see *FAPL vs BT and others I* - [2017] EWHC 480 (Ch); *FAPL vs BT and others II* - [2018] EWHC 1828 (Ch); *UEFA vs BT and others* - [2017] EWHC 3414 (Ch)).

measures could be used by the FAPL. In another case, because of the irregular timing of the events, related to boxing matches, it was not possible to identify the target servers in the same way and a particular form of monitoring was to be carried out over a seven-day period prior to each event, by the FAPL. The order provided for boxing events to be notified to the defendants at least four weeks in advance of the date of the event.<sup>124</sup>

The Irish courts have followed the same reasoning as the UK courts in the FAPL cases, issuing a first order in 2019,<sup>125</sup> which lasted for one league season and then was further extended by another court order;<sup>126</sup> in 2020, a further order was issued in another case also dealing with the blocking of IP addresses of infringing websites by access providers.<sup>127</sup> In both cases, the orders covered the existing servers as well as future servers, within the duration of the order.

In 2018, in a Dutch case, the Court of The Hague issued a blocking order against an ISP (Ecatel) ordering the blocking of any service used by third parties to infringe the copyrights belonging to the licensee of the sport broadcasting rights (FAPL) promptly. Ecatel had to block a service no later than 30 minutes after receipt of a notice from the FAPL (or its designated third party) with an electronic report containing the list of websites to be blocked, and to keep it blocked for the duration of the match.<sup>128</sup> If Ecatel had not respected the order, the court would have imposed a penalty up to a maximum of EUR 1 500 000.

In the above-mentioned decision of the Commercial Court of Madrid,<sup>129</sup> the court allowed the plaintiff (Telefónica Audiovisual Digital) to identify a new list of web resources (in addition to those subject to the blocking orders) on a weekly basis and send this list to the access providers. These ISPs must block the new web resources (URLs, DNS, IP addresses), within a maximum period of three hours from the notification of the new listing. According to the ruling, the weekly update list is sent simultaneously to all access providers, to preserve homogeneity in its execution. In Italy, live blocking injunctions are considered to be theoretically applicable in the case of live broadcasting of sports events, although there are no precedents.

Lastly, in Portugal, under the procedure provided by the Portuguese MoU adopted by the IGAC in December 2018, several pirate sites that stream live events have been blocked. According to this procedure and after its application, 12 736 illegal streams of national football championship matches have been identified and the streams have been blocked by MAPINET and the IGAC. The blocking measure was temporary and related to the duration of the broadcast of the events, also including the DNS blocking targets with reference to a specific domain or website, preventing access to that domain or website.

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<sup>124</sup> Matchroom Boxing v. BT [2018] EWHC 2443 (Ch):  
<https://www.bailii.org/ew/cases/EWHC/Ch/2018/2443.html>.

<sup>125</sup> *The Football Association Premier League Limited v. Eircom Limited and Others* [2019] IEHC 615.

<sup>126</sup> *The Football Association Premier League Limited v. Eircom Limited (Trading as Eir) and Others* [2020] IEHC 332.

<sup>127</sup> *Union Des Associations Européennes De Football v. Eircom Limited T/A Eir and Others* [2020] IEHC 488.

<sup>128</sup> <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2018:615>.

<sup>129</sup> *Football Association Premier League v. Ecatel*, op. cit.

**Table 5. Live blocking injunctions**

	Live blocking injunctions	Character and scope of the live blocking injunctions	Duration of the live blocking injunctions	Implementation of the live blocking injunctions
<b>AT</b>	No	No	No	No
<b>BE</b>	No	No	No	No
<b>BG</b>	No	No	No	No
<b>CY</b>	No	No	No	No
<b>CZ</b>	No	No	No	No
<b>DE</b>	Yes	Injunctions for streaming or mirroring infringing content	Case-by-case basis	In the case of live sports events, § 97 section 1 UrhG allows for presumptive action if future infringements are likely to occur.
<b>DK</b>	No	No	No	No
<b>EE</b>	No	No	No	No
<b>ES</b>	Yes	Blocking of web resources (URLs, Domains, IP addresses)	Three years	Identification of a list of web resources and the corresponding block
<b>FI</b>	No	No	No	No
<b>FR</b>	No	No	No	No
<b>GR</b>	No	No	No	No
<b>HR</b>	No	No	No	No
<b>HU</b>	No	No	No	No

	Live blocking injunctions	Character and scope of the live blocking injunctions	Duration of the live blocking injunctions	Implementation of the live blocking injunctions
<b>IE</b>	Yes	Blocking of websites	For the duration of the event	Implemented also with regard to the target servers
<b>IT</b>	No	No	No	No
<b>LT</b>	No	No	No	No
<b>LU</b>	No	No	No	No
<b>LV</b>	No	No	No	No
<b>MT</b>	No	No	No	No
<b>NL</b>	Yes	Blocking of any service used by third parties to infringe the copyrights belonging to licensees of the sports broadcasting rights	Case-by-case basis	Setting a penalty of EUR 5 000 for each illegal stream, up to a maximum of EUR1 500 000
<b>PL</b>	No	No	No	No
<b>PT</b>	Yes	Blocking of websites	For the duration of the event	Implemented also with regard to the target servers
<b>RO</b>	No	No	No	No
<b>SE</b>	No	No	No	No
<b>SI</b>	No	No	No	No
<b>SK</b>	No	No	No	No
<b>UK</b>	Yes	Blocking of websites	For the duration of the event	Implemented also with regard to the target servers



Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire

#### 3.2.4.4. De-Indexing injunctions

A de-indexing injunction requires the search engine to remove from its index of search results those results which lead to pages containing illegal copyrighted content. Such injunctions are aimed at de-indexing websites and platforms which illegally broadcast sports events or which host hyperlinks redirecting users to illegal broadcast sports events.

Injunctions against search engines do not fall within the provision of Article 8(3) of the InfoSoc Directive, which refers to “intermediaries whose services are used by a third party to infringe a copyright or related right”. This kind of injunction is usually based on similar requirements to those provided for blocking injunctions, and notably those related to the absence of any other possible remedy for the rightsholders and the reasonableness and appropriateness of the de-indexing. However, as long as both the European and the national regulations do not allow general monitoring obligations for search engine providers, they cannot be expected to monitor their content. Furthermore, this measure is theoretically different from blocking orders, as access to the infringing content is only de-indexed, but users may still access this content by bypassing search engine services. In any case, injunctions addressed to search engines may be another way of protecting audiovisual rights, by limiting the findability of the infringing content.

In general, the recourse to de-indexing injunctions is extremely rare, and there is no reported case law on these injunctions.

**Table 6. De-indexing injunctions**

	De-indexing injunctions	Competent authority to issue the de-indexing injunctions	Legal basis of de-indexing injunctions
<b>AT</b>	No	No	No
<b>BE</b>	No	No	No
<b>BG</b>	No	No	No
<b>CY</b>	No	No	No
<b>CZ</b>	Yes	Courts	Section 77 of the Civil Procedure Court and Section 40 of the Copyright



	De-indexing injunctions	Competent authority to issue the de-indexing injunctions	Legal basis of de-indexing injunctions
			Act
<b>DE</b>	Yes	Courts	§ 7 Sec. 4 TMG
<b>DK</b>	Yes	Courts	Sections 413 and 414 of the Administration of Justice Act
<b>EE</b>	No	No	No
<b>ES</b>	Yes	Courts	Articles 455 and following LEC
<b>FI</b>	No	No	No
<b>FR</b>	Yes, for a duration of 12 months	Courts	Article L. 322-6 Intellectual Property Code
<b>GR</b>	No	No	No
<b>HR</b>	No	No	No
<b>HU</b>	No	No	No
<b>IE</b>	No	No	No
<b>IT</b>	Yes	Courts	Article 156 and Article 163 of the Copyright Law
<b>LT</b>	No	No	No
<b>LU</b>	No	No	No
<b>LV</b>	No	No	No

	De-indexing injunctions	Competent authority to issue the de-indexing injunctions	Legal basis of de-indexing injunctions
<b>MT</b>	No	No	No
<b>NL</b>	Yes	Courts	Article 26d of the Dutch Copyright Act and Article 15e of the Dutch Neighbouring Rights Act
<b>PL</b>	No	Not applied by Courts	No
<b>PT</b>	Yes	Courts	Article 210-G Copyright and Related Rights Code
<b>RO</b>	No	No	No
<b>SE</b>	No	No	No
<b>SI</b>	No	No	No
<b>SK</b>	No	No	No
<b>UK</b>	No	No	No

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire

### 3.2.5. Codes of conduct and Memorandums of Understanding

This paragraph outlines the existence of voluntary initiatives, such as national codes of conduct and/or Memorandums of Understanding (MoU) related to the enforcement of IP rights and the fight against online piracy at the national level.

In addition to initiatives at the national level, detailed below, it is worth mentioning the European MoU on online advertising and IP rights which was agreed in 2018.<sup>130</sup> The signatories of the MoU<sup>131</sup> committed to minimising the placement of advertising on websites and mobile applications that infringe copyright. The results show a drop of 12% in the advertisements' share of European Business on IP-infringing websites, and a decrease from 62% to 50% of advertising by major brands in the gambling sector.<sup>132</sup>

The table below sums up which countries have adopted codes of conduct and/or MoU and their relevance in relation to online piracy related to sports. In particular, the table shows the entities involved, the scope of the code of conduct and/or MoU and the main content of it. In most of the covered countries (Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, Greece, Ireland, Italy, Lithuania, Luxembourg, Malta, Sweden) no codes of conduct or MoU have been identified at the national level by public and/or private entities regarding the enforcement of IP rights and the fight against online piracy. On the other hand, the other countries can be classified as follows.

- Countries in which an MoU has been adopted (Latvia, Poland, Portugal, UK). In Latvia, an MoU has been signed between the association “For legal content!”, the Latvian Internet Association, the National Electronic Mass Media Council, the Public Utilities Commission and the State Revenue Service. This MoU is aimed at achieving a general and full understanding by the responsible competent institution, and raising society’s awareness of illegal content, increasing the number of registered broadcasting service providers and internet content providers. Also, the Portuguese associations<sup>133</sup> concluded an MoU in 2015, which provides a specific procedure aimed at facilitating the blocking of copyright-infringing websites. In addition, in Portugal, a new agreement is aimed at interrupting infringement in the context of sports events by facilitating the temporary blocking of illegal transmissions of live sports events on the internet, in particular football matches.
  
- Countries in which a code of conduct has been adopted (Denmark, France, Netherlands, Spain). In particular, in France, two codes of conduct were adopted: the Charter committing to fight piracy and for the development of online legal

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<sup>130</sup> <https://ec.europa.eu/docsroom/documents/30226>.

<sup>131</sup> The MoU was signed by 29 signatories: <https://ec.europa.eu/docsroom/documents/46236>.

<sup>132</sup> Study on impact of the memorandum of understanding on online advertising and intellectual property rights on the online advertising market, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (European Commission: <https://op.europa.eu/en/publication-detail/-/publication/5f7f9ed7-f0dd-11eb-a71c-01aa75ed71a1>).

<sup>133</sup> IGAC, the Portuguese Association of Telecom Operators, the Portuguese Consumer Directorate-General, the organisation responsible for “.pt” domain registrations (DNS.PT), the anti-piracy group MAPINET, advertising associations and consumer associations. IGAC is competent to supervise, inspect and monitor activities in the area of copyright and related rights. IGAC is assisted by MAPINET, an association that has been working in the detection of websites where protected works are made available or distributed to the public without the authorisation of the legitimate rightsholders.

music offers (*Charte d'engagement pour la lutte contre la piraterie et pour le développement des offres légales de musique en ligne*) between the cultural industries, under the direction of the Minister for Economy; and the agreement to combat audiovisual piracy (*Accord de lutte contre la piraterie audiovisuelle*) signed by Google and the Association Against Audiovisual Piracy (ALPA). Recently, the same agreement has been signed by ALPA and Facebook.<sup>134</sup>

- Countries in which recommendations or guidelines have been adopted (Germany, Hungary, Romania, Slovakia). In these cases, there has not been a proper adoption of a code of conduct or MoU, but some best practice and guidelines have been adopted. For instance, in Romania, two documents, the “National intellectual property strategy” and the “National Action Plan”, were adopted; these deal with measures in the field of IP rights, including the enforcement of copyright and the fight against piracy. Both documents were addressed to public authorities with competences in the field of copyright enforcement. Also, in Slovakia, the “Recommendations on domain piracy” were adopted by the Association for online advertising with the aim of limiting unfair enrichment. Recently, in Germany, the Clearing House for Copyright on the Internet (CUII) has been formed by internet access providers and rightsholders with the aim of blocking access to websites which systematically infringe copyright. In particular, the CUII conducts a review procedure to determine whether a DNS blocking order may be issued against structurally copyright infringing websites : at the end of the two stages of the procedure, the CUII releases recommendations.
- Further specifications and details on the application of codes of conduct and MoU are provided in a series of case studies in section 4 below.

**Table 7. Codes of conduct and Memorandums of Understanding**

	Codes of conduct and MoU	Participants	Purpose and scope of the code of conduct	Implementation
<b>AT</b>	No	No	No	No
<b>BE</b>	No	No	No	No
<b>BG</b>	No	No	No	No
<b>CY</b>	No	No	No	No

<sup>134</sup> [https://www.cnc.fr/professionnels/communiqués-de-presse/le-cnc-et-lalpa-saluent-lengagement-de-facebook-dans-la-lutte-contre-le-piratage\\_1507523](https://www.cnc.fr/professionnels/communiqués-de-presse/le-cnc-et-lalpa-saluent-lengagement-de-facebook-dans-la-lutte-contre-le-piratage_1507523).



MAPPING REPORT ON NATIONAL REMEDIES AGAINST  
ONLINE PIRACY OF SPORTS CONTENT

	Codes of conduct and MoU	Participants	Purpose and scope of the code of conduct	Implementation
<b>CZ</b>	No	No	No	No
<b>DE</b>	Yes	Association of internet access providers and rights holders	Examination of the lawfulness of the blocking of access to a copyright-infringing website	Implemented in March 2021
<b>DK</b>	Yes, MoU	Association of telecommunications companies	The purpose is to regulate the procedure related to blocking injunctions	No
<b>EE</b>	No	No	No	No
<b>ES</b>	Yes – voluntary code of conduct	Ministry of Culture and Sports – Secretary of State for Digital Advancement	The purpose is to create an alliance between rightsholders, internet operators and advertisers against services infringing IP rights.	Implemented in March 2020 – drafted in 2018
<b>FI</b>	No	No	No	No
<b>FR</b>	Yes, code of conduct	The major ISPs and members of the cultural industry Google, Facebook and ALPA	The purpose is to fight piracy and to develop of online legal music offers.  The purpose is to combat audiovisual piracy on the internet, specifically illegal videos, and improving the notice and take-down process.	Implemented in 2004  Implemented in 2007 (Google) and 2021 (FB)
<b>GR</b>	No	No	No	No
<b>HR</b>	No	No	No	No
<b>HU</b>	No	No	No	No
<b>IE</b>	No	No	No	No
<b>IT</b>	No	No	No	No
<b>LT</b>	No	No	No	No

	Codes of conduct and MoU	Participants	Purpose and scope of the code of conduct	Implementation
<b>LU</b>	No	No	No	No
<b>LV</b>	Yes, MoU	Association "For legal content!", the Latvian Internet Association, the National Electronic Mass Media Council, the Public Utilities Commission and the State Revenue Service	<p>The main purposes are:</p> <ul style="list-style-type: none"> <li>- to achieve a complete understanding on the part of the responsible competent institutions, officials and the government regarding the problems of illegal television and internet content providers and the damage caused to the state budget and Latvian society</li> <li>- to raise the Latvian society's awareness of the harm caused by illegal television and internet content providers and to raise awareness of social responsibility in this regard</li> <li>- to increase the number of registered broadcasting service providers and internet content providers</li> <li>- within the framework of the MoU and the competence of each Party, to reduce the number of households using illegal television service providers.</li> </ul>	Implemented in 2017
<b>MT</b>	No	No	No	No
<b>NL</b>	Yes, code of conduct	Negotiations between internet providers and a variety of stakeholders	The purpose of the code is to provide a procedure for processing notifications of instances of unlawful and criminal content on the internet by the internet intermediaries and to indicate the conditions under which removal should take place, its timing and the information that must be provided to	Implemented in 2008



	Codes of conduct and MoU	Participants	Purpose and scope of the code of conduct	Implementation
			the service provider.	
PL	Yes, MoU	International Content Protection Summit organised by the Sygnal Association, including national and European broadcasters and televisions companies	The purpose is the enforcement of IP rights and the protection of the rights of broadcasters, distributors, licensors, recipients of TV programmes and other multimedia content.	Implemented in October 2018, in Warsaw
PT	Yes, MoU	<p>(i) Rightsholder representatives, the IGAC, the Portuguese Association of Telecom Operators, the Portuguese Consumer Directorate-General, the organisation responsible for “.pt” domain registrations (DNS.PT), the anti-piracy group MAPINET, advertising associations and consumer associations</p> <p>(ii) IGAC</p>	<p>(i) The MoU provides a procedure to facilitate the blocking of copyright-infringing websites: (i) the signatory rightsholder representatives notify MAPINET of websites that contain either a minimum of 500 works which allegedly infringe copyright or related rights, or sites two thirds of whose content is allegedly infringing content; (ii) MAPINET are in charge of gathering the evidence submitted by the rightsholders’ representatives and forwarding two wide-ranging complaints to the IGAC per month; (iii) within 15 working days of receiving the complaints, the IGAC contacts ISPs to restrict access to the websites through DNS blocking.</p> <p>(ii) The purpose of the MoU is to facilitate the temporary blocking of illegal transmissions of sports events on the internet, in particular, transmissions of football matches.</p>	<p>(i) Implemented in 2015</p> <p>(ii) Implemented in 2018</p>



	Codes of conduct and MoU	Participants	Purpose and scope of the code of conduct	Implementation
<b>RO</b>	No	No	No	No
<b>SE</b>	No	No	No	No
<b>SI</b>	No	No	No	No
<b>SK</b>	Yes, MoU	Association for online advertising (IAB) including IAB UK, IAB Italy and IAB Poland, alongside AdForm, Google and GroupM	The purpose is to limit unfair enrichment at the expense of other trademarks on the Slovak internet.	Implemented in 2018
<b>UK</b>	Yes	Police Intellectual Property Crime Unit	N/A	Implemented with rightsholders in 2017 after a Freedom of Information request

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire.

### 3.2.6. Reports and studies

This section outlines a selection of the most significant reports and studies, including the ones concerning: i) online piracy of protected content; ii) the illegal online transmission of sports events; iii) reliable sources on the typology of technologies and business models used for illegal online transmissions of sports events; iv) the legal offer of online sports content. Moreover, we highlight the awareness campaigns regarding online piracy and the associations of broadcasters or rightsholders actively working to address the issue of online copyright infringement of audiovisual sports content.

First of all, reports and studies about online piracy of protected content have been identified in the following member states: (Belgium, Bulgaria, Czech Republic, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, UK). In all these cases, the reports and studies concern online piracy of protected content, without specific reference to sports content.

Moreover, in France, Latvia, Poland, Spain and the UK, specific reports and studies dealing with illegal online transmissions of sports events have been published. For example, in Latvia, two reports deal with the illegal transmission of sports events. These reports concluded that 65% of respondents implicitly admit that they watch sports programmes online illegally, revealing also that 5.6% of respondents implicitly admit to

watching sports broadcasts online illegally via a smartphone. Meanwhile, in Hungary, a research study reported the data collected from P2P file-sharing services and link-sharing platforms in sports events.

Additionally, the studies reporting on technologies and business models used for illegal streaming of sports content as reported have been adopted in Belgium, France, Latvia, Poland and Spain. For instance, the Belgian Entertainment Association published a study presenting the main technologies used for the illegal streaming of content, specifically Internet Protocol Television (IPTV) and live streaming websites which are the ones used for the illegal transmission of sports content. Similarly, in France, according to the HADOPI study on the illegal use of live TV programmes (*Étude: la consommation illicite de programmes TV en direct*) illegal IPTV, livestreaming, and social networks are the main technologies and business models used for the illegal streaming of sports content.

It is worth mentioning that some member states have published studies on the legal offer of online sports content (Germany, France, Sweden). In Germany, the *Kommission zur Ermittlung der Konzentration im Medienbereich* reported that there has been an increase in competition in the field of sports audiovisual rights since the emergence of online platforms. Meanwhile, a portal with information on websites for sports events that provides access to legal offers online has been implemented by the Swedish Patent and Registration Office. In France, the national regulatory authority (CSA) published a report entitled “The area of sports reception” which focuses on the quality and attractiveness of legal sports programmes, the evolution of the area of sports events and the role of the major economic and operational players, as well as the evolution of certain regulations.

In some countries, awareness campaigns related to online piracy were conducted (Austria, Croatia, Cyprus, Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain, UK). In Austria, Germany and Estonia, videoclips that show the negative consequences of copyright infringement are played before movies in cinemas and on DVDs. In Ireland, some campaigns highlighted the creation of a warning notice about fraud and safety in online services, in relation to music piracy, which could be sent to uploaders. In Romania, there is an awareness campaign that encourages young people to consume music by buying, downloading, or listening online from legal sources. In France, the major advertising agencies, rightsholders and advertisers signed a Charter of good practice in online advertising for the enforcement of IP and related rights (*Charte de bonne pratique dans la publicité en ligne pour le respect du droit d'auteur et des droits voisins*). Furthermore, in some countries, there are associations which work actively in the copyright field (Austria, Belgium, Bulgaria, Czech Republic, Denmark, Germany, Ireland, Poland, Romania, Slovakia, Slovenia, Spain, Sweden).

## 4. Conclusions

The overview of national remedies against online infringement of sports event broadcasting is complex and characterised by several differences among the covered countries on all the issues considered in this report. Also, the present report highlights the peculiar aspects that differentiate infringements of sports event broadcasts from other copyright infringements. In this context, the conclusions of the report may underline some key issues and some common approaches.

- 1) One area of common ground is that sports events themselves are not copyrightable as held by the CJEU in the Premier League case considering that “the subject-matter concerned would have to be original in the sense that it is its author’s own intellectual creation”. Certain national courts have also ruled on this issue. However, the audiovisual recordings of sports events are protected as long as they meet the originality requirement.
- 2) In addition to copyright protection, related rights are granted in EU law to both the producers of the audiovisual recordings and to the broadcasters. Producers are entitled to the right of the first fixation of the film, while broadcasters are entitled to the transmission of broadcast signals for public reception, even when the content broadcast and carried by the signal is not eligible for copyright protection.
- 3) One of the main differences among the covered countries concerns the nature of the rights which entitle subjects to take legal actions in the case of infringement. In some countries the matter is regulated by law (in Italy, where a related right is granted by the law to the organiser, and in France, through a generic right to the economic exploitation of sports events). Sports clubs may take legal actions based exclusively on domiciliary rights in the case of unauthorised recordings made within the premises of the venue where the event takes place. However, this would not cover illegal streams based on the official broadcast and disseminated online (in this case the signal of the broadcast is captured by infringers and used to distribute illegal streams). In eight countries (Bulgaria, France, Greece, Hungary, Italy, Romania, Slovakia, Spain) special forms of protection have been granted to sports event organisers, in some cases by assigning the economic exploitation of the audiovisual rights to them. Federations and leagues can therefore act on this basis in the case of illegal broadcasting or streaming of the event (for instance, in France, Article L. 333-1 of the Sports Code provides that the exploitation rights for sports events belong either to the sports federations or to the organisers of sports events). In some countries, this right is also accorded to sports clubs (e.g. Cyprus, Netherlands, Portugal). Broadcasters may act as owners of the copyright (in the

- case of audiovisual recordings on condition of originality or creativity) or of the related rights (in the case of fixation) as well as licensees of these rights, if the audiovisual rights are owned by the sports organisers (leagues or federations).
- 4) Many countries have empowered public bodies with specific competences to act in the case of copyright infringement, in order to speed up the time taken to obtain an injunction or other remedies, reducing, at the same time, the costs associated with legal proceedings.
  - 5) Some countries, in implementing the E-Commerce Directive, have introduced statutory NTD procedures. The purpose of the NTD procedure is principally to avoid judicial proceedings, where the infringement is terminated after the notification. In other cases, some measures have been implemented by administrative regulations and finally, in the vast majority of covered countries, the requirements of the NTD have been determined by law.
  - 6) European law considers blocking injunctions, which are applicable for any copyright infringement, in Article 16(1) of the E-Commerce Directive, Article 8 of the InfoSoc Directive, and Article 11 of the IPRED. Blocking injunctions allow courts to order ISPs to adopt technical measures aimed at disabling or blocking access to websites or platforms disseminating illegal content or hosting hyperlinks (uploaded by third parties/users) allowing access to illegal content. There is no specific injunction procedure provided in EU or national law in the case of illegal broadcasting or streaming of live sports events.
  - 7) In general, blocking orders are mainly addressed to ISPs (access and hosting providers), while those addressed to the operators of the platforms or of the websites are less frequent. Also, measures taken against end-users are extremely rare.
  - 8) In the majority of countries, the rules of the procedural codes (civil and criminal) on injunctions also apply in the case of copyright and thus, to the infringement of sports event broadcasting rights.
  - 9) Following the case law of the CJEU (in the *Telekabel* case), blanket injunctions are allowed, and thus some courts have started using dynamic orders which also involve future URLs and IP addresses, not just exclusively those which are in existence at the time the order is issued. In some countries, courts have adopted live blocking injunctions, i.e. injunctions that can be executed in a timely manner and therefore hinder active live streams. Some courts have also empowered claimants by granting them the right to periodically notify the list of new websites and IP addresses used by the infringing parties.
  - 10) Live blocking injunctions are time-limited, and the courts have extended the duration of the measures over varying periods of time (one or more seasons; subsequent events for the same sports broadcast). At the time of writing, live blocking injunctions have been issued in only four of the covered countries.
  - 11) When issuing blocking measures (including dynamic and live blocking injunctions) national courts have to make sure they are proportionate. Nevertheless, the question regarding the allocation of the costs of these measures to ISPs remains unaddressed. This aspect should be carefully considered especially if it ISPs are

required to dedicate human resources to the activities necessary to comply with the court orders or to invest funds in the improvement of their technologies.

## 5. Case studies<sup>135</sup>

This section contains a selection of five case studies on leading initiatives and best practice in the fight against the infringement of sports events.

### 5.1. Dynamic blocking injunctions

Blocking injunctions have become an important legal remedy that is frequently used by both rightsholders and prosecutors across the EU. Blocking access to a website can only be done within the limits of the law and it requires targeted legal measures. In practice, in response to the blocking of a website, internet pirates may create “mirror” websites that are made accessible to internet users. These websites share the same illegal content by using a new URL or by moving to another hosting service, typically with a domain name that matches the previous one, so that internet users can easily find it using a search engine. This dynamic nature of online piracy has triggered legislators to adopt a “dynamic” approach to remedies too.

So-called “dynamic” (or “forward-looking”) blocking injunctions are intended to cover repeated infringements of copyright and/or related rights and thus to enhance the effectiveness of the measures available to rightsholders to protect their content on the internet. The dynamic aspect of this legal mechanism allows the prevention of repeated and future infringements of the same protected content, by extending the scope of a particular injunction to cover similar websites, including other domain names, Internet Protocol (IP) addresses or URLs, without the need to initiate new legal proceedings to obtain a new injunction.<sup>136</sup>

As mentioned earlier in this report, this type of injunction exists in a number of the covered countries (Austria, Denmark, France, Germany, Greece, Ireland, Italy, the Netherlands, Portugal, Romania, Spain, Sweden and the UK). In a number of cases, such

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<sup>135</sup> The case studies incorporate the input received from the International Olympic Committee (IOC), La Liga, Premier League, UEFA and the Sports Rights Owners Coalition (SROC) who responded to a specific survey of the European Audiovisual Observatory.

<sup>136</sup> European Commission (2017), Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, Guidance on certain aspects of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights, {SWD(2017) 431 final} - {SWD(2017) 432 final}, Brussels, COM(2017) 708 final: <https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-708-F1-EN-MAIN-PART-1.PDF>.

injunctions have been granted in the context of illegal online dissemination of sports events.

### 5.1.1. The scope of dynamic injunctions

An injunction to prohibit the continuation of an IP infringement or to prevent any imminent infringement (i.e. both “static” as covering a specific website, or “dynamic”) may be issued by the competent judicial authority against intermediaries, irrespective of their liability and the legal qualification of the services under the E-Commerce Directive (hosting, caching and “mere conduit” services), as long as their services are used by a third party in order to infringe the rights.<sup>137</sup>

Thus, for example, in Italy, the Court of Milan, issued an injunction in October 2020 against the intermediary whose services were used to facilitate copyright infringing activities,<sup>138</sup> in accordance with Article 156 et seq. of the Italian Copyright Act (implementing Article 8(3) of Directive 2001/29/EC).<sup>139</sup> The court held in this regard that the qualification of the intermediary’s activities as a hosting or access (content delivery network – CDN) provider was not relevant for the purpose of issuing such an injunction.

In particular, the case concerned an application by Lega Serie A and Sky Italy for a dynamic blocking injunction against CloudFlare and other internet service providers (ISPs) for providing access to copyright infringing content, pursuant to Article 156 et seq. of the Italian Copyright Act. The Court of Milan issued a dynamic blocking injunction ordering the blocking of current and future domain names and IP addresses of several Internet Protocol Television (IPTV) services for illegal distribution of audiovisual content. While CloudFlare argued that it could not be found liable for hosting illegal content, the court found that this service was an intermediary within the meaning of Article 156 et seq. of the Italian Copyright Law, against which an injunction could be issued regardless of any liability of its own.<sup>140</sup> In February 2021, this judgment was upheld on appeal by the Court of Milan, which ordered CloudFlare to cease all services rendered in support of illegal IPTV, including hosting services. In the absence of action, a penalty of EUR 5 000 was imposed for each day of non-compliance with the judge’s order. The Court of Milan also

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<sup>137</sup> See in this sense Article 8(3) of the InfoSoc Directive.

<sup>138</sup> Court of Milan, Ordinance No. 42163/2019 R.G., 5 October 2020, *Sky Italia, Lega Serie A v. Cloudflare et al.* See: EUIPO, Recent European case law on the infringement and enforcement of intellectual property rights, May 2021, p. 82, [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/New\\_Case\\_Law\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/New_Case_Law_en.pdf).

<sup>139</sup> Italian Copyright Act (*Legge 22 aprile 1941 n. 633, Protezione del diritto d'autore e di altri diritti connessi al suo esercizio*): [http://www.interlex.it/testi/l41\\_633.htm#156](http://www.interlex.it/testi/l41_633.htm#156).

<sup>140</sup> <http://copyrightblog.kluweriplaw.com/2020/11/23/further-developments-on-italian-enforcement-against-illicit-distribution-of-sport-events/>.

ordered the service provider Google Ireland Ltd to produce before the court information that would allow the identification of the recipients of its services.<sup>141</sup>

Furthermore, the scope of an injunction order against an intermediary whose services are used by a third party to infringe a copyright or related right, under Article 8(3) of the Information Society (InfoSoc) Directive and Article 11 of the Intellectual Property Rights Enforcement Directive (IPRED), may not be limited to the defendant targeted by the legal action but may be extended to cover all ISPs under the jurisdiction of the member state. For example, in Denmark, the code of conduct<sup>142</sup> signed between the Danish Rights Alliance and Teleindustrien, the association of Danish telecommunication operators, indicates that, if a court or a relevant authority delivers a blocking order targeting a member of the industry, the Rights Alliance shall communicate the decision to its members (ISPs) to block the designated websites, as confirmed in the case law.<sup>143</sup> Based on a revision in 2020, the code of conduct also applies to dynamic injunctions.

Infringing websites are often listed in court decisions awarding blocking injunctions but, due to the dynamic nature of content piracy, dynamic injunctions foresee extensions to all future domain names, different IP addresses or URLs reproducing the infringement.

#### 5.1.1.1. Territorial scope

Blocking injunctions issued by national courts normally apply to access service providers under the jurisdiction of the relevant member state and illegal activities having effects in the same territory.<sup>144</sup> Courts can order the blocking of illegal content regardless of where the IP infringement took place, or where the users accessing the content are located, as long as the illegal activities are directed at users in the member state in question.

For example, in April 2019, the Court of Frederiksberg issued, for the first time in Denmark, a dynamic injunction against the telecommunications operator Telenor.<sup>145</sup> The plaintiff acted pursuant to the Danish Copyright law,<sup>146</sup> notably Article 67, by which an

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<sup>141</sup> See the case as reported by FAPAV, “FAPAV: Rispetto delle regole fondamentale per sostenere il comparto audiovisivo”: <https://fapav.it/il-tribunale-di-milano-ordina-a-cloudflare-il-blocco-dei-servizi-alle-iptv-pirata/>

<sup>142</sup> Code of conduct for handling decisions on blocking access to intellectual property infringement services (*Code of Conduct for håndtering af afgørelser om blokering af adgang til tjenester, der krænker immaterielle rettigheder*), revised edition of 18 May 2020: [https://rettighedsalliancen.dk/wp-content/uploads/2020/06/CoC\\_DA.eksl\\_Anneks\\_m.logo\\_-1.pdf](https://rettighedsalliancen.dk/wp-content/uploads/2020/06/CoC_DA.eksl_Anneks_m.logo_-1.pdf).

<sup>143</sup> Court of Frederiksberg, Case BS-5975/2019-FRB, 15 April 2019, *LaLiga v. Telenor*: <https://docplayer.dk/130135008-Retten-paa-frederiksberg-kendelse.html>.

<sup>144</sup> For more details about jurisdiction in civil litigation over intellectual property matters, as well as the laws applying with regard to non-contractual matters involving intellectual property, please see at pages 31 and 64-66 of Cabrera Blázquez F., Cappello M., Grece C., Valais, S., “Copyright enforcement online: policies and mechanisms”, IRIS Plus, European Audiovisual Observatory, Strasbourg, 2015, <https://rm.coe.int/1680783480>.

<sup>145</sup> Op. cit., Case BS-5975/2019-FRB. See LaLiga’s reaction to the decision: <https://newsletter.laliga.es/global-futbol/laliga-teams-up-with-rettighedsalliancen-and-wins-first-case-on-illegal-football-in-denmark>.

<sup>146</sup> Copyright Act. LBK No. 1144 of 23/10/2014 (*Lov om ophavsret. LBK nr. 1144 af 23/10/2014*): <https://www.retsinformation.dk/eli/ta/2014/1144>.



audiovisual recording may not be reproduced or made available to the public without the consent of the rightsholder. In this case, Telenor was ordered to block customers' access to websites offering illegal streaming of live sports events, at the request of the Danish Rights Alliance,<sup>147</sup> acting upon the mandate of LaLiga. In particular, the court ordered Telenor to implement a technical solution (a domain name system (DNS) blocking measure) to prevent access to the list of infringing websites, as well as other websites notified to it by the Danish Rights Alliance. The court stated that, for the order to have the desired effect, it is essential that the blocking is handled “dynamically”. Regarding the notion of “actual knowledge” of illegal activity,<sup>148</sup> the court specified that only website addresses that are notified to Telenor by the defendant are covered by the injunction, meaning that addresses that Telenor is unaware of, or that Telenor may become aware of from other third parties, are thus not covered by the injunction.

In September 2019, a similar dynamic injunction was issued by the same Court of Frederiksberg, ordering Telenor to block access to Rojadirecta, on the same terms stipulated in the previous decision.<sup>149</sup> Following this decision, the Spanish company that administers Rojadirecta, Puerto 80 Projects SLU, whose website was targeting users worldwide, including in Denmark, appealed the first court decision, claiming that the site was not illegal, as legal content was also available, adding that the alleged illegal content was only a small part of the sports event content available on the website.<sup>150</sup> The defendant pleaded that any blocking of Rojadirecta should be limited to the specific times when matches are played, as part of the proportionality assessment, in order to balance the different fundamental rights at stake. Additionally, the defendant disputed LaLiga's ownership of rights in the audiovisual recordings and the fact that the recordings were protected by copyright, asking the court to annul the blocking order against Rojadirecta. In its deliberation, the court established that LaLiga had provided enough evidence of its ownership rights, pursuant to Spanish Royal Decree-Law 5/2015,<sup>151</sup> and that the recordings were protected by copyright due to the creative choices made, including the

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<sup>147</sup> Danish Rights Alliance (*RettighedsAlliancen*): <https://rettighedsalliancen.com/>.

<sup>148</sup> Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

<sup>149</sup> In the April 2019 judgement, the Court of Frederiksberg decided to postpone the decision regarding Rojadirecta, so as to allow the applicant sufficient opportunity to defend its interests during the proceedings. Court of Frederiksberg, Case BS-5975/2019-FRB, 6 September 2019, *LaLiga v. Telenor*: <http://docplayer.dk/155331151-Retten-paa-frederiksberg-kendelse.html>.

<sup>150</sup> Court of Frederiksberg, Case BS-44200/2019-OLR, 1 July 2020, *LaLiga v. Telenor*: <https://www.recordere.dk/wp-content/uploads/2020/07/Bilag-2.pdf>.

See also the Danish Rights Alliance's reaction to the decision: <https://rettighedsalliancen.com/the-danish-rights-alliance-and-laliga-wins-case-on-blocking-of-illegal-live-sports/>.

<sup>151</sup> Royal Decree-Law 5/2015, of April 30, on urgent measures in relation to the marketing of the exploitation rights of audiovisual content of professional football competitions (*Real Decreto-ley 5/2015, de 30 de abril, de medidas urgentes en relación con la comercialización de los derechos de explotación de contenidos audiovisuales de las competiciones de fútbol profesional*), <https://www.boe.es/buscar/act.php?id=BOE-A-2015-4780>.

logo of LaLiga, the introductory video sequence, the anthem, film footage with highlights from the match and various forms of graphics, as they appear in a transmission manual prepared by LaLiga for the rightsholders.<sup>152</sup> Additionally, the court considered that blocking access to Rojadirecta in Denmark was not disproportionate, given the extensive violations reportedly taking place on the website, for which the company Puerto 80 Projects SLU could be held liable.

#### 5.1.1.2. Temporal scope

Dynamic injunctions granted by courts are often limited in time, based on the principle of proportionality. The durations granted tend to reflect the particular calendars of sports events. However, as recurring matches take place over several months or years, courts may issue injunctions that are enforceable over a specified period of time, covering up to several competition seasons. As to the renewal or extension of the order, some courts, such as those in Ireland, require a prior assessment of the effectiveness of the order and consideration of whether an extension is appropriate.<sup>153</sup> Furthermore, as dynamic injunctions cover evolving infringing domain names and/or IP addresses that may be unknown to the court at the time of the decision, courts often specify a timeframe (periodically, or up to a certain deadline) for rightsholders or third parties mandated by them to communicate lists of infringing websites to service providers for the purpose of blocking access.

In Spain, Telefónica Audiovisual Digital had sought a dynamic injunction against several ISPs to prevent access to unlicensed live football content.<sup>154</sup> Previously, Telefónica had already asked the ISPs to block access to the illegal content, but the company had failed to comply. As the defendants acquiesced to the claims brought forward by the plaintiff, the Madrid Court issued an injunction in accordance with the terms of the application, also ordering the defendants to bear the costs arising from the implementation of the blocking measures pursuant to Article 21 of the Spanish Civil Procedures Law.<sup>155</sup> First, the court issued a “static” blocking injunction, covering three football seasons between 2019 and 2022, requiring the ISPs to block access to the URLs, DNSs and IP addresses of the pirate websites listed in the order, in both HTTP and HTTPS protocols, within a maximum period of 72 hours from the notification of the court’s

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<sup>152</sup> Spanish law provides for a transfer of the audiovisual rights included in the scope of the Royal Decree-Law, namely the “right of arena”, which belongs to participating clubs, and to the event organiser, LaLiga. According to a decision from the Court (Audiencia) of Sevilla issued on 22 September 2021, in such audiovisual rights as foreseen in Article 2.1 of the Royal Decree-Law, the broadcasting right is also included, for its exploitation in the national or foreign market (decision not published).

<sup>153</sup> *The Football Association Premier league Ltd v. Eircom Ltd (Trading as Eir) & Others* (Approved) [2020] IEHC 332 (15 June 2020): <http://www.bailii.org/ie/cases/IEHC/2020/2020IEHC332.html>.

<sup>154</sup> Commercial Court No. 7 of Madrid, 11 February 2020, Appeal No. 2174/2019, *Telefónica Audiovisual Digital, S.L.U. v. Vodafone España, S.A.U., et al.*: <https://www.poderjudicial.es/search/AN/openDocument/d1ecc270d29d6605/20200219>.

<sup>155</sup> Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil, 08/01/2001: <https://www.boe.es/buscar/act.php?id=BOE-A-2000-323&p=20151028&tn=1#a21>.

decision. Subsequently, the court issued a dynamic blocking injunction to block all new websites identified by the plaintiff and notified simultaneously to all ISPs, on a weekly basis, within a maximum period of three hours from the notification of the new list, and to report back to the plaintiff on the exact time the blocking was implemented. The dynamic blocking injunction is valid until 25 May 2022 (the presumed end date of the three football seasons covered by the order).

## 5.1.2. The criteria for dynamic injunctions

National courts have systematically assessed a number of criteria to justify their decisions to grant a dynamic injunction, based on their interpretation of EU and national rules related to injunctions. Despite the lack of harmonisation, some similarities regarding the procedural requirements can be highlighted.

Rightsholders are required to provide evidence of their ownership of copyright and/or related right, as well as of the alleged infringement of these rights (such as a list of the allegedly illegal content), of the damage or harm caused by the allegedly infringing activity or of the imminence of damage or harm to be suffered, if the infringement occurs or continues – particularly in the case of an application for an interim (or provisional) injunction.<sup>156</sup>

In many national jurisdictions, applicants are required to demonstrate that the remedies and measures sought meet certain principles such as proportionality, appropriateness, subsidiarity, objectivity and effectiveness.<sup>157</sup> However, the requirements vary from country to country. While “effectiveness” and “subsidiarity” are required by the courts in Ireland, the Netherlands<sup>158</sup> and the UK,<sup>159</sup> they are not required by the Spanish courts, which instead require that measures be “objective” and “non-discriminatory”.<sup>160</sup>

The measures granted by the judge depend on the activity of the defendant and the type of infringement. Depending on the courts’ assessment, the judge may grant a “static” or “dynamic” injunction and define the scope of the remedies proposed.<sup>161</sup> A full examination by the judge (judgment on the merits) is necessary for the issuance of a permanent injunction. However, in the case of potential or imminent damage related to

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<sup>156</sup> EUIPO, Study on dynamic blocking injunctions in the European Union, March 2021, p. 32, [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_Dynamic\\_Blocking\\_Injunctions/2021\\_Study\\_on\\_Dynamic\\_Blocking\\_Injunctions\\_in\\_the\\_European\\_Union\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_Dynamic_Blocking_Injunctions/2021_Study_on_Dynamic_Blocking_Injunctions_in_the_European_Union_FullR_en.pdf).

<sup>157</sup> Ibid.

<sup>158</sup> Judgement, District Court of The Hague, *The Football Association Premier League v. Ecatel*, 24 January 2018, C/09/485400/ HA ZA 15-367: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2018:615>

<sup>159</sup> See previously mentioned FAPL decisions for both Ireland and the UK.

<sup>160</sup> Op. cit., EUIPO.

<sup>161</sup> Ibid., EUIPO, p. 33.

the occurrence or continuation of an infringement, the judge may apply urgent proceedings and issue interim injunctions, which only require a partial examination of the case (summary judgment).

In Italy, in urgent proceedings, a partial examination of the merits is sufficient for the court to issue a dynamic blocking injunction, pending a full examination and a subsequent decision of the court. In Greece, Ireland and Spain, proceedings can only be *inter partes*. However, in several of the covered countries, proceedings can be either *inter partes* or *ex parte*, under certain conditions, that vary across the countries. Those conditions include: the urgency of taking action (Germany); that the infringement has already occurred (Netherlands); a prior notification to the intermediary targeted by the injunction (UK).<sup>162</sup>

In 2019, the High Court of Ireland issued a dynamic injunction against several ISPs, at the request of the FAPL (Football Association Premier League – UK), arguing that “whilst the remedy may not be 100% successful, this is not relevant as long as the remedy is persuasive”.<sup>163</sup> The judgement also referred to a 2016 decision by the Irish Court of Appeal,<sup>164</sup> concerning music rights, which lists a set of criteria so as to assess whether an injunction is consistent with EU law. In particular, the court ruled that an injunction must be necessary (in this case, the court considered that ordering an injunction against the “non-infringing” ISP was necessary in view of the ineffectiveness of other remedies to stop copyright infringement in the digital context); the costs involved should not be excessive or disproportionate and the order itself should not be unduly complicated (in this case, for example, the judge considered the cost for the ISP to develop new software for automated filtering in light of its turnover); the cost-sharing proposals must be fair and reasonable (in this case, the judge used general criteria of fairness and proportionality); the order must respect the fundamental rights of the parties affected, including the users of the ISP and the duration of the proposed injunction and the provisions for review should be reasonable. The same criteria were used as a basis to assess further dynamic injunction orders in Ireland, including the extension of the 2019 order<sup>165</sup> and, in 2020, a similar order at the request of the Union of European Football

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<sup>162</sup> Op. cit.

<sup>163</sup> *The Football Association Premier League Ltd. v. Eircom Ltd. t/a Eir & Others* [2019] IEHC 615 (15 July 2019): <http://www.bailii.org/ie/cases/IEHC/2019/H615.html>.

<sup>164</sup> *Sony Music Entertainment Ireland Ltd & Others v. UPC Communications Ireland Ltd* [2016] IECA 231 (28 July 2016): <http://www.bailii.org/ie/cases/IECA/2016/CA231.html>.

<sup>165</sup> The 2019 order was granted for a limited period until the end of the competition’s last game, then extended following an application by the FAPL for the remainder of the 2019/2020 season and the 2020/2021 season.

Op. cit., [2020] IEHC 332.

Associations (UEFA),<sup>166</sup> and in July 2021, when the initial order in the Republic of Ireland<sup>167</sup> was extended for the 2021/22 and 2022/23 seasons.<sup>168</sup>

In cases where none of the criteria set by the examining court are met, the request for an injunction may be turned down. In Malta, the company IMG Media Limited requested an injunction against several ISPs to block specific IP addresses as well as any other IP addresses from which Serie A games were being illegally transmitted.<sup>169</sup> The court ruled that the applicant had not been able to satisfactorily demonstrate its ownership of the rights, namely by providing a written licensing agreement. The applicant had provided an unauthenticated copy of a letter issued by the Chief Executive Officer of Serie A as sole proof of ownership, and the court estimated that “a simple copy of a statement made by a person not properly identifiable” was not sufficient. Moreover, the applicant did not show how it could suffer “irreparable prejudice” which could justify an injunction. Finally, the court acknowledged that the remedy sought by the applicant was not suitable, adding that the latter could have had recourse to provisional and precautionary measures available under Chapter 488 of the Enforcement of Intellectual Property Rights Act<sup>170</sup> to protect its rights, but failed to do so.

Key UK judgements have provided ISPs or third parties against whom a blocking order has been issued (including hosting providers, website or streaming service operators, operators of the target servers, as well as any customer) with the possibility of making an application to set aside or vary the blocking order.<sup>171</sup> In this respect, and in order to safeguard the interests of all parties, the Matchroom 2020 judgment provided for exceptions, by allowing the ISP to request the suspension of the blocking in certain cases. For example, a suspension may be requested in order to correct or investigate the possible overblocking of material allegedly caused by the measure. Such a suspension may also be requested by the ISP in order to ensure the reliable operation of its Internet Watch Foundation blocking system, if the ISP reasonably considers that such operation might otherwise be impaired. The blocking may also be suspended in order to maintain the integrity of the service of the ISP or the operation of its blocking system in the event of upgrades, troubleshooting or maintenance, or in the event of any imminent threat to

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<sup>166</sup> *Union Des Associations Européennes De Football v. Eircom Ltd T/A Eir & Others* (Approved) [2020] IEHC 488 (29 September 2020): <http://www.bailii.org/ie/cases/IEHC/2020/2020IEHC488.html>.

<sup>167</sup> <https://www.uefa.com/insideuefa/news/0262-10a755a9beb9-932121c2f1af-1000--uefa-secures-irish-high-court-order-to-halt-illegal-streaming-o/>.

<sup>168</sup> UEFA also successfully renewed its blocking order in the UK in July 2021 that will last for the 2021/22 and 2022/23 seasons. <https://www.irishtimes.com/business/media-and-marketing/order-against-pirates-live-streaming-uefa-matches-is-extended-1.4620545>.

<sup>169</sup> Civil court, 1204/2020/1 LM, 1 October 2020, <https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&CaseJudgementId=123238>.

<sup>170</sup> Enforcement of Intellectual Property Rights (Regulation) Act, <https://legislation.mt/eli/cap/488/eng/pdf>

<sup>171</sup> See decisions: *Matchroom Boxing Ltd & Anor v. British Telecommunications Plc & Others* [2018] EWHC 2443 (Ch) (20 September 2018), <https://www.bailii.org/ew/cases/EWHC/Ch/2020/2868.html> and *The Football Association Premier League Ltd v. British Telecommunications Plc & Others* [2017] EWHC 480 (Ch) (13 March 2017): <http://www.bailii.org/ew/cases/EWHC/Ch/2017/480.html>

the security of the ISP's networks or systems. In all cases, the suspension of the blocking will be subject to a reasoned notification to the applicant or a designated third party, within a reasonable period of time and provided that such suspension does not last any longer than is reasonably necessary.

## 5.2. Live blocking injunctions and expeditious action

Responsive and expeditious actions, to prevent or disable access to alleged pirated content, is particularly important as live sport events lose most of their market value once the live transmission is over. Although national courts continue to order the complete blocking of access to websites in the EU, a number of them<sup>172</sup> have found that the problem of piracy in the EU has grown to the point where blocking websites is no longer sufficiently effective enough to combat live sports piracy. They have thus resorted to live blocking orders, to block access to servers hosting, delivering and/or facilitating access to illegal streams of live sports events, only while the event is being broadcast. This means that the infringing service may become accessible again after the end of the live transmission.

Live blocking injunctions are generally considered to meet the need for expeditious action in the context of the live transmission of sports events, while providing an appropriate and proportionate remedy that matches the lifespan of the live streams and ensuring a “fair balance” between fundamental rights. In particular, live blocking orders are more limited in time and therefore have potentially less impact on fundamental rights, such as the right of the ISP to conduct business. Such injunctions were first used in the UK, and then in other covered countries, such as Ireland and the Netherlands.

### 5.2.1. The criteria for live blocking injunctions

Given the dynamic nature of live sports piracy, one type of dynamic injunction that is particularly used in this area is the live blocking injunction (also referred to as a “live blocking order”), as illustrated by the following case law.

In 2017, the England and Wales High Court issued the first live blocking order in the EU, marking a significant milestone in the legal battle against online piracy of live sports content.<sup>173</sup> In this case, the Football Association Premier League (FAPL) sought a blocking order requiring several major UK ISPs to take measures to “block, or at least impede, access” by their customers to streaming servers which deliver illegal live streams

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<sup>172</sup> See, for example, in Ireland, Germany, Portugal or the UK.

<sup>173</sup> The *Football Association Premier League Ltd v. British Telecommunications Plc & Others* [2017] EWHC 480 (Ch) (13 March 2017): <http://www.bailii.org/ew/cases/EWHC/Ch/2017/480.html>.

of Premier League live games to UK customers, pursuant to Section 97A of the UK Copyright, Designs and Patents Act 1988.<sup>174</sup> The court listed a number of key aspects that established the scope of live blocking orders, as follows:

- The order is a “live” blocking order which only has effect at the times when live Premier League match footage is being broadcast: in practice, this is made possible thanks to video monitoring technologies and blocking systems, respectively for the rightsholder (the FAPL) and the intermediary (ISPs).
- The order provides for the list of target servers to be “re-set” each match week during the Premier League season. This allows for new servers to be identified by the FAPL and notified to the defendants in order for them to block the target servers each week; it also ensures that old servers are not blocked after the end of a week, unless they continue to be observed as sources of illegal footage.
- The order is only for a short period of time: the court granted the defendants time to prepare for complying with the terms of the order, which was valid for the duration of the 2016/2017 football season, and subject to an effectiveness assessment prior to any future application by the rightsholders for a similar order.
- The order requires a notice to be sent to each hosting provider each week when one of its IP addresses is subject to blocking: the court allowed for the hosting providers and the operator of any website or streaming service claiming to be affected by the live blocking order “to be granted permission to apply to set aside or vary the order”.

In exercising its discretion as to whether or not to issue an order, the England and Wales High Court also assessed the proportionality of the order in relation to the competing rights of the parties affected by it, in light of the need to ensure a “fair balance” between fundamental rights, as developed by the CJEU, the European Court of Human Rights (ECtHR) and national courts.<sup>175</sup>

The FAPL order prompted UEFA to seek and obtain from the England and Wales High Court a similar injunction, a few months later. UEFA was seeking to ensure that the same ISPs take measures to block, or at least impede, access by their customers to streaming servers which deliver illegal live streams of UEFA Competition matches to UK

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<sup>174</sup> Copyright, Designs and Patents Act 1988:

<https://www.legislation.gov.uk/ukpga/1988/48/section/97A#:~:text=%5BF197A%20injunctions%20against%20service,their%20service%20to%20infringe%20copyright.>

<sup>175</sup> See C-131/12, *Google Spain SL v. Agencia Espanola de Protección de Datos*, 2014, <https://curia.europa.eu/juris/liste.jsf?num=C-131/12>; C-314/12, *UPC Telekabel Wien GMBH v. Constantin Film Verleih GMBH, Wega Filmproduktionsgesellschaft MBH*, 2014, <https://curia.europa.eu/juris/document/document.jsf?jsessionid=F8979C20B601B9A3CEC292561DAFF957?text=&docid=149924&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1532101>; and C-360/10, *Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM) v. Netlog NV*, 2012, <https://curia.europa.eu/juris/documents.jsf?num=C-360/10>.

viewers for the duration of the 2017/2018 UEFA season.<sup>176</sup> The injunction in the UEFA case was granted on mostly similar terms as in the FAPL case. In addition, the England and Wales High Court expressly noted that the evidence filed suggested that the injunctions granted in the FAPL case had been “very effective” and that there had been no evidence of “overblocking”. The court pointed out that the need “for such orders has been emphasised by further evidence which has become available since then as to the scale of the problem of illegal streaming”.

In 2019, the High Court of Ireland issued the first live blocking injunction in the country, against several ISPs, at the request of the FAPL in a similar matter.<sup>177</sup> The court referred to the reasons invoked in the FAPL case to apply such a blocking order and anticipated that, based on the evidence submitted, such an order would have similar effectiveness in Ireland as it had achieved in the UK. The order was granted for a limited period until the end of the competition’s last game. The blocking was then extended following an application by the FAPL for the remainder of the 2019/2020 season and the 2020/2021 season<sup>178</sup> and was followed by a similar live blocking order at the request of UEFA, in 2020, that was granted on the same grounds.<sup>179</sup> As previously mentioned, this initial order in the Republic of Ireland<sup>180</sup> was extended in July 2021 for the 2021/22 and 2022/23 seasons,<sup>181</sup> and UEFA also successfully renewed its blocking order in the UK in July 2021 that will last for the 2021/22 and 2022/23 seasons.

## 5.2.2. The conditions of proportionality, effectiveness and subsidiarity in live blocking injunctions

As with any blocking injunction, national courts require rightsholders to provide evidence of their ownership of rights and the damage or harm they have suffered or are suffering as a result of the alleged infringing activity or of the imminence of damage or harm to be suffered, if the infringement occurs or continues. The latter is particular to interim injunctions. Based on the evidence submitted, the court assesses whether the measures requested by the applicant are appropriate and in accordance with the principles of proportionality, effectiveness and subsidiarity.

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<sup>176</sup> *Union des Associations Européennes de Football v. British Telecommunications Plc & Others* [2017] EWHC 3414 (Ch) (21 December 2017): <http://www.bailii.org/ew/cases/EWHC/Ch/2017/3414.html>

<sup>177</sup> *The Football Association Premier League Ltd. v. Eircom Ltd. t/a Eir & Others* [2019] IEHC 615 (15 July 2019): <https://www.bailii.org/ie/cases/IEHC/2019/H615.html>.

<sup>178</sup> *The Football Association Premier League Ltd v. Eircom Ltd (Trading as Eir) & Others* (Approved) [2020] IEHC 332 (15 June 2020): <http://www.bailii.org/ie/cases/IEHC/2020/2020IEHC332.html>.

<sup>179</sup> *Union Des Associations Européennes De Football v. Eircom Ltd T/A Eir & Others* (Approved) [2020] IEHC 488 (29 September 2020) : <http://www.bailii.org/ie/cases/IEHC/2020/2020IEHC488.html>.

<sup>180</sup> <https://www.uefa.com/insideuefa/news/0262-10a755a9beb9-932121c2f1af-1000--uefa-secures-irish-high-court-order-to-halt-illegal-streaming-o/>.

<sup>181</sup> <https://www.irishtimes.com/business/media-and-marketing/order-against-pirates-live-streaming-uefa-matches-is-extended-1.4620545>.



In 2018, the FAPL sought from the Dutch District Court of The Hague an immediate injunction against an ISP, Ecatel,<sup>182</sup> to stop providing any services that facilitate the viewing of illegal streams of Premier League football.<sup>183</sup> In this case, the plaintiff requested an order against the defendant, to cease and desist any service used by third parties to infringe its copyright and trademark rights, by permanently or temporarily suspending the service concerned within 30 minutes of the receipt of an electronic notification by the FAPL or by a designated third party, permanently or only during the broadcast, competition or a relevant part of a day, subject to an immediately payable penalty in the case of non-compliance. It also asked for compensation for the damages suffered and to be suffered by the FAPL and its licensees, as a consequence of the alleged violations. The defendant pleaded that the claims violate the principles of effectiveness, proportionality, and subsidiarity and constitute an inadmissible violation of the rights to freedom of enterprise and freedom of information. It also argued that their service provision would only concern “mere conduit” services – only acting as server rental service and not as a hosting provider.

In its judgement,<sup>184</sup> the court held that the FAPL was entitled to take legal action, after providing undisputed proof of the transfer of rights by contractual agreement. It also dismissed any prejudice to the users’ right to information or to Ecatel’s right to freedom of entrepreneurship. The court highlighted that the required action is relatively simple, involves little cost and will have to be undertaken only after prior notification by the plaintiff and only for the limited duration of each football match. The court argued that sports events broadcasts are considered as works entitled to copyright protection, insofar as creative choices are made during a broadcast of a football match (e.g. the positioning of the cameras, following certain moments of the game, moving along the camera or not, zooming in and out, the switching between cameras during the recording and repeating moments of the event, the live commentary during the event, the opening video, the anthem and some of the graphic images used). It also added that the fixation requirement cannot be applied because it “occurs simultaneously with the filming of the event”. Finally, the court considered that Ecatel qualifies as an intermediary, according to Article

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<sup>182</sup> The FAPL had previously taken legal action against Ecatel, before the District Court of The Hague in August 2014, for copyright and trademark rights infringement by hosting illegal streams of FAPL-owned sports content, resulting in a cease and desist order. However, in April 2015, Ecatel appealed the decision, claiming to be a mere server rental service and not a hosting provider in the meaning of Article 14 of the E-Commerce Directive.

<sup>183</sup> To investigate and assess that Ecatel’s servers were used in the illegal streaming of Premier League content, the FAPL commissioned NetResult/Opsec, a private company using advanced technology to help broadcasters, distributors and other rightsholders in combatting live event-based piracy: <https://www.opsecsecurity.com/opsec-online/antipiracy-live-streaming-protection>. See also Premier League press release at: <https://www.premierleague.com/news/603945>. The company observed that an Ecatel server was used as a hosting server of streaming platforms.

<sup>184</sup> Judgement, District Court of The Hague, *The Football Association Premier League v. Ecatel*, 24 January 2018, C/09/485400/ HA ZA 15-367: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2018:615>

26d of the Dutch Copyright Act,<sup>185</sup> as its servers are used both as origin nodes and edge nodes of the illegal streams. Furthermore, the court established that Ecatel is a hosting provider for streaming websites.

In determining the appropriateness of the measures requested by the plaintiff, the court assessed these measures in light of the principles of proportionality, effectiveness, and subsidiarity. With respect to the proportionality aspect, Ecatel claimed that the blocking would affect access to other lawful content uploaded by its customers. The court considered that it is the responsibility of both Ecatel and its customers to lay down, via contractual agreement, and to implement an adequate notice and take-down policy to clear their liability, simplify the procedure of taking down illegal content and facilitate access to legal content. Additionally, the FAPL has indicated that it is able to report individualised infringements and that blocking will only be necessary for a period limited in time – the duration of the relevant event – and only if the stream has not already been blocked in another way. Regarding the effectiveness criterion, the court referred to the *Telekabel/Wien* case,<sup>186</sup> where it was determined that measures are effective if they result in preventing or discouraging unauthorised access to copyrighted works. As to the principle of subsidiarity, the court assumed that there are no other less burdensome measures which could achieve the objective desired, highlighting the technical difficulties of tracing the “origin node” of each stream. Moreover, streaming providers could not be adequately prosecuted for alleged infringements, due to the lack of clarity about their identity, and because of their establishment in distant jurisdictions and rapid changes of server addresses.

In the end, the court granted an order, requiring Ecatel to cease providing services to customers during Premier League matches, no later than 30 minutes after receipt of an electronic notification to that effect from the FAPL or a designated third party. The order was effective 24 hours after its issuing and was applicable for the duration of the match. Failure to comply with this order would result in an immediately payable penalty of EUR 5 000 for each illegal stream, and up to a maximum of EUR 1 500 000.

### 5.2.3. The time dimension of live blocking orders

Due to the time constraints imposed by the nature of the event and the legal remedy (i.e. live blocking), and in order to meet the requirements of effectiveness and proportionality, several decisions have set time limits for the implementation of the remedies granted by the courts. Some courts have also imposed obligations on intermediaries to execute the blocking action, as well as obligations on rightsholders to provide the information necessary for such execution.

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<sup>185</sup> Dutch Copyright Act (*Auteurswet*): <https://wetten.overheid.nl/BWBR0001886/2021-01-01>

<sup>186</sup> C-314/12, *UPC Telekabel Wien GmbH v. Constantin Film Verleih GmbH, Wega Filmproduktionsgesellschaft mbH*: <https://curia.europa.eu/juris/liste.jsf?num=C-314/12>.

### 5.2.3.1. Duration of the blocking

As mentioned earlier, the duration of the blocking order depends on the duration of the single event. In certain sports, such as boxing, the duration of an event or a game may vary. To ensure the proportionality of the measure, servers that have to be blocked, must be unblocked as soon as reasonably practicable after the end of the event.

In the *Matchroom 2020* decision,<sup>187</sup> the court ordered the issuer of the blocking request to notify the ISP within 15 minutes of the end of the relevant Matchroom event to end the blocking and restore access. The court's decision may be justified by the fact that in certain sports, such as boxing, the end time is only indicative, as the encounter may last for a shorter period of time. It is therefore justified to lift the blocking as soon as the live event is over.

Most sports events occur based on a calendar, fixed in advance by the different parties involved in the organisation. The information provided by rightsholders on the timing of the event may impact their ability to obtain a live blocking order from the judge. In a case filed before the England and Wales High Court, Matchroom requested an injunction against several ISPs, to block the illegal streaming of boxing events. However, the court noted that the scheduling of the events was not fixed sufficiently far in advance, thus not allowing the rightsholders to list all of the individual boxing events within the designated seven-day period prior to each event. Given these particular circumstances, the court required the plaintiff to notify the defendants of the events at least four weeks in advance and awarded a blocking order for two years. Later on, in the *Matchroom 2020* decision, the court indicated that any changes to the start time, date or competitors for a boxing event must be notified to the ISPs.<sup>188</sup>

### 5.2.3.2. The need for prompt removal of illegal content

The effectiveness of live blocking injunctions lies in the promptness of blocking access to illegal content or activity. In this regard, the 2017 FAPL UK decision emphasised that

*[a] timely response is important in the case of Premier League matches because, to be effective, any intervention must occur during the course of a match. The operators of streaming servers regularly change the IP addresses from which the servers operate.*

The 2019 FAPL Ireland decision stated that

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<sup>187</sup> Op. cit., Matchroom, 2020.

<sup>188</sup> The applicant had filed a new blocking injunction request, after the first one expired. It had previously been revised and extended by the court in 2019.

*Matchroom Boxing Ltd & Anor v. British Telecommunications Plc & Others* [2020] EWHC 2868 (Ch) (29 October 2020), <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Ch/2020/2868.html&query=IL-2018-000155+>.

*[t]he evidence regarding effectiveness [...] demonstrates the following: (a) Increased compliance rate (that is the proportion of unauthorised live streams which have been disrupted or removed within 60 minutes of detection); [...].*

Almost all known live blocking orders that have been granted by national courts have asked for rapid action upon notification of the infringement, without, however, defining a timeframe for action.<sup>189</sup> Thus, for example, in the 2020 Matchroom decision described above, the ISPs were ordered to use their best endeavours to disable access to the IP address as soon as practicable and subject to the limits of their networks and resources and to use the technical means set out in the decisions on at least two occasions during and prior to the conclusion of a Matchroom event, so as to ensure that the blocking worked effectively.<sup>190</sup>

Meanwhile, considerable improvements in video monitoring technologies and advances in blocking systems allow ISPs to block and unblock IP addresses during the course of matches in some cases automatically. These technological advances have allowed rightsholders to play a proactive role in adequately protecting their rights. In the 2017 FAPL UK decision, the judge considered that such technologies facilitate the identification of illegal streams with a very high level of accuracy almost in real time, enabling prompt content take-down notifications to be issued. In light of these technological developments and in an unprecedented decision, the Dutch District Court of The Hague assessed the notion of "expeditious" action for a hosting service provider in the Ecatel case, setting the time limit for prompt action at 30 minutes, following the formal notification of an IP infringement on its service by the rightsholder.<sup>191</sup>

### **5.3. The role of police forces in addressing IP infringement: legal proceedings and cross-border cooperation**

Cooperation between police forces, rightsholders, stakeholder associations and public bodies have proven to be efficient in the field of IP enforcement. Nevertheless, the prosecution of IP infringements remain challenging due to the global dimension of online content piracy, the complexity of the different infringing business models and the geographical spread of the different activities and players involved across multiple countries. In that respect, cross-sector cooperation and IP enforcement go hand in hand.<sup>192</sup>

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<sup>189</sup> *The Football Association Premier League Ltd. v. Eircom Ltd. t/a Eir & Others* [2019] IEHC 615 (15 July 2019): <http://www.bailii.org/ie/cases/IEHC/2019/H615.html>.

<sup>190</sup> Op. cit., Matchroom, 2020.

<sup>191</sup> Op. cit., Ecatel, 2018.

<sup>192</sup> EUIPO, "Illegal IPTV in the European Union". Research on online business models infringing intellectual property rights – phase 3, November 2019, <https://op.europa.eu/en/publication-detail/-/publication/0617f865-1bc6-11ea-8c1f-01aa75ed71a1>.



At the national level, different approaches regarding the role of the police can be observed. At the EU level, various cooperation frameworks and initiatives have been put in place over the years, allowing prosecution and IP enforcement across borders. Moreover, the EU agencies for law enforcement, Europol, and for criminal justice cooperation, Eurojust, play an ever-growing role in coordinating actions across Europe and in collaboration with international partners.

### 5.3.1. The role of police forces in addressing IP rights at national level

The role played by law enforcement authorities varies significantly in each of the covered countries, depending on the legal system, the structure of the public authorities and institutions, as well as on existing agreements between all the different bodies involved in the field of IP protection.

#### 5.3.1.1. Structure and organisation of police forces in charge of IP protection

Police forces in charge of IP enforcement operate under a variety of structures that are different from one country to another. Several of the countries have set up dedicated cybercrime or copyright units within their police forces.

In Malta, the Cybercrime Unit provides technical assistance in the detection, investigation, and prosecution of cybercrimes. Dedicated units exist in Belgium, Bulgaria, Denmark, Greece, Ireland, Latvia, Lithuania, Poland, Sweden, and the UK.<sup>193</sup>

In Italy, IP enforcement falls under the scope of activity of two police units: the Postal and Communications Police, a unit of the state police that works on preventing and investigating cybercrime and IP violations, among others;<sup>194</sup> and the *Guardia di Finanza*, a special police corps that directly depends on the Ministry of Economy and Finance, is in charge of addressing audiovisual piracy and trademark counterfeiting as part of its general competence in all economic and financial matters.<sup>195</sup> It has a Special

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<sup>193</sup> See Table 8: Overview of the main police structures and actions related to copyright infringement at national level.

<sup>194</sup> The Postal and Communications Police (Polizia Postale e delle Telecomunicazioni), <https://www.poliziadistato.it/articolo/23393/>

<sup>195</sup> *Guardia di Finanza*, <https://www.gdf.gov.it/chi-siamo/organizzazione/compiti-istituzionali>

Technological Fraud Unit and an Economic-Financial Police Unit, that are involved in multiple investigations.<sup>196</sup>

The table below presents an overview of police actions addressing the piracy of audiovisual content in EU member states and the UK, with a selection of the most significant cases, where available.

**Table 8. Overview of police action on audiovisual content piracy in the covered countries**

Country	
<b>AT – Austria</b>	No information reported.
<b>BE – Belgium</b>	The Federal Computer Crime Unit (FCCU) is a special unit within the Federal Police that brings cyber-specialists together to tackle crimes related to computer technologies. <sup>197</sup>
<b>BG – Bulgaria</b>	The Bulgarian Police Cybercrime Unit investigates IP infringement cases. In 2019, it participated in an internationally coordinated operation with Europol and Eurojust, alongside police authorities from Cyprus, Greece and the Netherlands, in which servers related to a mobile application for the distribution of television programmes were seized. <sup>198</sup>
<b>CY – Cyprus</b>	The Cypriot police took part in an internationally coordinated operation with Europol and Eurojust, alongside police authorities from Bulgaria, Greece and the Netherlands, leading to the arrest of Cypriot nationals involved in IP infringements. <sup>199</sup>
<b>CZ – Czech Republic</b>	The police, together with the public prosecutor and the courts, may initiate criminal proceedings against perpetrators of IP infringements. In February <sup>200</sup> and May <sup>201</sup> 2019, the police conducted operations in several regions against illegal broadcasts of top sports competitions, following a complaint from DIGI TV, which holds the broadcasting rights to the FAPL, LaLiga, Bundesliga, Serie

<sup>196</sup> Guardia di Finanza, *Operazione Match off – Blitz contro la pirateria audiovisiva*, 25 January 2015, <https://www.gdf.gov.it/stampa/ultime-notizie/anno-2015/gennaio-2015/operazione-match-off-blitz-contro-la-pirateria-audiovisiva>

<sup>197</sup> The Federal Computer Crime Unit (FCCU), <https://www.police.be/5310/questions/criminalite-sur-internet/namur-magazine-la-computer-crime-unit>.

<sup>198</sup> Bulgarian Ministry of the Interior, Комисар Явор Колев: Щетите, които за 2 месеца са нанесени на носителите на права от големи български, национални телевизионни програми, са над 10,5 млн. лева, 15 June 2019, [d https://www.mvr.bg/press/](https://www.mvr.bg/press/).

<sup>199</sup> Philenews, “Further investigations into the pirated channels are expected”, 11 January 2018, <https://www.philenews.com/koinonia/eidiseis/article/475689>.

<sup>200</sup> Telly, “Krásť vysílání Premier League se nevyplácí”, 7 February 2019, <https://telly.cz/krast-vysilani-premier-league-se-nevyplaci/>.

<sup>201</sup> Telly, “DIGI TV úspěšně zasáhla proti dalším pirátům”, 28 May 2019, <https://telly.cz/digi-tv-uspesne-zasahla-proti-dalsim-piratum/>.

Country	
	<p>A, and ATP tournaments.</p> <p>Cybercrime experts from the National Criminal Police and Investigation Service (NCOZ) of the National Central Office against Organised Crime took part in joint international enforcement operations against online piracy.<sup>202</sup></p>
<b>DE – Germany</b>	<p>The police authorities of the different regions have contact points addressing cybercrime.<sup>203</sup></p> <p>For example, the Bavaria Cybercrime Central Office (ZCB) is headed by the chief public prosecutor and works in cooperation with the Federal Criminal Police Office and with international partners.<sup>204</sup> In 2017, two domains were switched off by ZCB, in connection with illegal streaming platforms.<sup>205</sup></p>
<b>DK – Denmark</b>	<p>The Police Cybercrime Centre NC3, has the technical capacity and expertise to collaborate with the national police in investigating copyright related crimes.<sup>206</sup></p> <p>In 2018, the Rights Alliance set up a permanent IP task force within the Office of the Public Prosecutor for Special Economic and International Crime (SØIK), to deal with internet-based crime.<sup>207</sup></p>
<b>EE – Estonia</b>	<p>The police have previously conducted an investigation against LeiserTV, a pirate service providing access to Estonian TV channels.<sup>208</sup> Proceedings shall be initiated by the rightsholders, who may file a criminal complaint with the police or the Prosecutor's Office.</p>
<b>ES – Spain</b>	<p>The Spanish Criminal Code contains a chapter on IP-related offences, market and consumers. Therefore, the police have the obligation to investigate criminal acts that could constitute an IP offence under Article 282 of the Criminal Procedure Act (LECRIM),<sup>209</sup> as well as to carry out the necessary procedures for the investigation of facts, which are agreed by a judge under Article 777 LECRIM.</p>

<sup>202</sup> Czech Republic Police, “Mezinárodní operace - ochrana autorských práv”, 7 September 2020, <https://www.policie.cz/clanek/mezinarodni-operace-ochrana-autorskych-prav.aspx>.

<sup>203</sup> The German Federal Police, “Polizei - Zentrale Ansprechstellen Cybercrime der Polizeien für Wirtschaftsunternehmen”, <https://www.polizei.de/>.

<sup>204</sup> Zentralstelle Cybercrime Bayern (ZCB), [https://www.justiz.bayern.de/gerichte-und-behoerden/generalstaatsanwaltschaft/bamberg/spezial\\_1.php](https://www.justiz.bayern.de/gerichte-und-behoerden/generalstaatsanwaltschaft/bamberg/spezial_1.php).

<sup>205</sup> Der Standard, “Illegales Sky-Streaming: stream4k.net und mystreamz.cc beschlagnahmt”, 26 January 2017, <https://www.derstandard.at/story/2000051545536/illegales-sky-streaming-deutscher-informatiker-verhaftet>.

<sup>206</sup> Astrid Søndberg, TV2, “60 dages fængsel og 100.000 kroner i bøde for ulovlig streaming”, 24 April 2015, <https://nyheder.tv2.dk/krimi/2015-04-24-60-dages-faengsel-og-100000-kroner-i-boede-for-ulovlig-streaming>.

<sup>207</sup> RettighedsAlliancen, “Fokus på brugere af ulovlige tjenester øges”, 29 January 2021, <https://rettighedsalliancen.dk/fokus-paa-brugere-af-ulovlige-tjenester-oeges/>

<sup>208</sup> Gregor Sibold, “Politsei kuulas LeiserTV asjas üle piraatluses kahtlustava mehe”, 11 October 2017, <https://digi.geenius.ee/rubriik/uudis/politsei-kuulas-leisertv-asjas-ule-piraatluses-kahtlustava-mehe/>

<sup>209</sup> Criminal Procedure Law (LECRIM) – *Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal*, <https://www.boe.es/buscar/act.php?id=BOE-A-1882-6036>

Country	
	<p>The Spanish National Police have taken part in various operations aimed at combatting IP infringement and have cooperated with Europol and Eurojust on various occasions.<sup>210</sup></p> <p>In 2019, they led an operation to dismantle an illegal streaming network, leading to the first sentence obtained by LaLiga against a regional illegal operator and resulting in the sum of EUR 500 000, a combination of fines and compensation, one of the largest in the history of audiovisual piracy in Spain.<sup>211</sup></p> <p>Examples of cases of police intervention:<sup>212</sup></p> <ul style="list-style-type: none"> <li>■ The dismantling of an illegal infrastructure offering subscriptions that gave illegal access to 1 490 items of audiovisual content through social networks (Facebook and WhatsApp) after a raid on a private home in Madrid.<sup>213</sup></li> <li>■ Seven people have been arrested for their alleged involvement in the administration and distribution of an illegal signal to at least 15 000 users throughout Spain. Four bank accounts with over EUR 145 000 were targeted.<sup>214</sup></li> </ul>
<b>FI – Finland</b>	No information reported.
<b>FR – France</b>	The judicial police have conducted various arrests against individuals selling IPTV boxes and codes <sup>215</sup> or operating illegal streaming websites. <sup>216</sup> They cooperated with the Association Against Audiovisual Piracy ( <i>Association de lutte contre la piraterie audiovisuelle</i> , ALPA).
<b>GR – Greece</b>	The police Cybercrime Sub-Directorate investigates crimes committed through the internet, including piracy of audiovisual content. In 2020, an indictment was

<sup>210</sup> El País, “La Policía Nacional desmantela una red que ofrecía cine y series piratas a través de una aplicación de mensajería”, 21 April 2021, <https://elpais.com/cultura/2020-04-21/la-policia-nacional-desmantela-una-red-que-ofrecia-cine-y-series-piratas-a-traves-de-una-aplicacion-de-mensajeria.html>

<sup>211</sup> LaLiga, Press release: “Historic ruling in Andalusia against audiovisual piracy”, 19 November 2019, <https://www.laliga.com/en-GB/news/sentencia-historica-en-andalucia-contr-la-pirateria-audiovisual>

<sup>212</sup> As reported by LaLiga in its reply to the Observatory’s questionnaire.

<sup>213</sup> Policía Nacional, “La Policía Nacional desmantela un centro ilegal que distribuía contenidos audiovisuales a través de las redes sociales”, 13 February 2019, [https://www.policia.es/\\_es/comunicacion\\_prensa\\_detalle.php?ID=4134](https://www.policia.es/_es/comunicacion_prensa_detalle.php?ID=4134)

<sup>214</sup> Ministerio del Interior, “La Policía Nacional desarticula un grupo delictivo dedicado a la distribución ilegal de contenidos audiovisuales”, 28 December 2020, [http://www.interior.gob.es/prensa/noticias/-/asset\\_publisher/GHU8Ap6ztgsg/content/id/12721291](http://www.interior.gob.es/prensa/noticias/-/asset_publisher/GHU8Ap6ztgsg/content/id/12721291).

<sup>215</sup> Adrien Schwyter, Challenges, « Comment la police française a arrêté des pirates informatiques IPTV », 12 June 2019, [https://www.challenges.fr/high-tech/comment-la-police-francaise-a-arrete-des-pirates-informatiques-iptv\\_657525](https://www.challenges.fr/high-tech/comment-la-police-francaise-a-arrete-des-pirates-informatiques-iptv_657525)

<sup>216</sup> Tristan Brossat, *Le Monde*, « Vincent, 17 ans, lycéen, et créateur d’un des sites les plus populaires de streaming illégal », 20 October 2018, [https://www.lemonde.fr/pixels/article/2018/10/20/vincent-17-ans-lyceen-et-createur-d-un-des-sites-les-plus-populaires-de-streaming-illegal\\_5372372\\_4408996.html](https://www.lemonde.fr/pixels/article/2018/10/20/vincent-17-ans-lyceen-et-createur-d-un-des-sites-les-plus-populaires-de-streaming-illegal_5372372_4408996.html)





Country	
	lodged against copyright infringers for decoding and rebroadcasting illegal pay-TV channels, resulting in several arrests. <sup>217</sup>  The Cybercrime Sub-Directorate also took part in a significant pan-European coordinated operation with Europol and Eurojust, alongside police authorities from Bulgaria, Cyprus and the Netherlands. <sup>218</sup>
<b>HR – Croatia</b>	No information reported.
<b>HU – Hungary</b>	No information reported.
<b>IE – Ireland</b>	The Intellectual Property Crime Unit (IPCU) of the Irish police, <i>An Garda Síochána</i> , is the national point of contact and the national coordinating unit for the investigation of IP offences. The unit works closely with other state agencies as well as private industry. <sup>219</sup>
<b>IT – Italy</b>	Copyright enforcement falls under the responsibility of both the Postal and Communications Police and the <i>Guardia di Finanza</i> .  In November 2020, the <i>Guardia di Finanza</i> 's technology fraud unit collaborated with Eurojust in conducting a massive operation in 12 countries, leading to the shutdown of 5 500 illegal live-streaming sites and social network channels using IPTV technology and the seizure of money and equipment. <sup>220</sup> As part of the same operation codenamed "Operation Perfect Storm", IMG, the legal distributor of Serie A, filed a court injunction to prevent illegal streaming. <sup>221</sup>
<b>LT – Lithuania</b>	A special police unit, the Intellectual Property Rights Enforcement Division of the Tax Police Department under the Ministry of the Interior, was established to address issues related to the implementation of organisational and technical measures, the training of police staff and the development of a methodology for investigating administrative IP infringements. <sup>222</sup>

<sup>217</sup> Police cybercrime sub-Directorate, Press release of 4 June 2020, [http://www.astynomia.gr/index.php?option=ozo\\_content&lang=%27..%27&perform=view&id=94920&Itemid=2470&lang=](http://www.astynomia.gr/index.php?option=ozo_content&lang=%27..%27&perform=view&id=94920&Itemid=2470&lang=)

<sup>218</sup> Police cybercrime sub-Directorate, Press release of 19 September 2019, [http://www.astynomia.gr/index.php?option=ozo\\_content&lang=&perform=view&id=89373&Itemid=2325&lang=](http://www.astynomia.gr/index.php?option=ozo_content&lang=&perform=view&id=89373&Itemid=2325&lang=)

<sup>219</sup> *An Garda* Annual report 2017, <https://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/news-media/2017-garda-annual-report.pdf>.

<sup>220</sup> *Guardia di Finanza*, "Vast international operation of the *Guardia di Finanza* in synergy with the state police to protect copyright, carried out in 19 foreign countries" (Vasta operazione internazionale della Guardia di Finanza in sinergia con la polizia di stato a tutela del diritto d'autore svolta in 19 paesi esteri), 11 November 2020.

<sup>221</sup> Times of Malta, "Italy-led IPTV crackdown shuts down servers in Malta and 11 other countries", Sarah Carabott, 11 November 2020, <https://timesofmalta.com/articles/view/italy-led-iptv-crackdown-shuts-down-servers-in-malta-and-11-other.831181>.

<sup>222</sup> Resolution No. 84-2552 of 29 September 2000 (Nutarimas Nr. 84-2552), [https://e-seimas.lrs.lt/rs/legalact/TAD/TAIS.110066/format/ISO\\_PDF/](https://e-seimas.lrs.lt/rs/legalact/TAD/TAIS.110066/format/ISO_PDF/).

Country	
	The police can order injunctions and impose sanctions.
<b>LU – Luxembourg</b>	No information reported.
<b>LV – Latvia</b>	<p>Illegal activities can be reported to the Cybercrime Unit of the state police, which regularly cooperates with the Association for Legal Content, <i>Par Legālu saturu</i>, and with the national media regulator in the detection, investigation and prevention of illegal distribution of audiovisual content.<sup>223</sup></p> <p>Recently, the Cybercrime Unit carried out an investigation into the case of illegal television distribution using card sharing, in the period between November 2016 and September 2019, leading to several arrests.<sup>224</sup></p>
<b>MT – Malta</b>	<p>The Cybercrime Unit of the Maltese police investigates crimes that take place over the internet or using a computer.<sup>225</sup></p> <p>In 2012, UEFA and several TV broadcasters complained to the Maltese police about the illegal transmission of football games. The rightsholders claimed that licensing rights are being breached by providers of a card-sharing service that is used with Dreambox, a satellite-based TV system.<sup>226</sup></p>
<b>NL – Netherlands</b>	Violation of copyright and related rights can be reported to the police. <sup>227</sup> For conducting inspections, the Dutch police has frequently involved experts from Stichting BREIN, the Association for the Protection of the Rights of the Entertainment Industry of the Netherlands. <sup>228</sup> It has taken part in an international coordinated operations with Europol and Eurojust, alongside police authorities Bulgaria, Cyprus and Greece.
<b>PL – Poland</b>	The cybercrime and economic crime units of the Polish police have conducted multiple operations and raids, particularly targeting card sharing. <sup>229</sup> These units organise regular training sessions, workshops and conferences for police officers, including a workshop on the demonetisation of piracy and e-workshops on anti-piracy tools. <sup>230</sup>

<sup>223</sup> See information reported on the websites of the Association for Legal Content, <https://www.parlegalusaturu.lv/lv/aktualitates/> and the Electronic Media Council, <https://www.neplpadome.lv/lv/sakums/padome/padomes-sedes/sedes-sadalas/>.

<sup>224</sup> Latvian State Police, “Pabeigta izmeklēšana lietā par nelegālas televīzijas izplatīšanu Rīgā un Balvos”, 27 January 2021, <https://www.vp.gov.lv/lv/jaunums/pabeigta-izmeklesana-lieta-par-nelegalas-televizijas-izplatisanu-riga-un-balvos>.

<sup>225</sup> Malta Police Cybercrime Unit, <https://pulizija.gov.mt/en/police-force/police-sections/Pages/Cyber-Crime-Unit.aspx>.

<sup>226</sup> Times of Malta, “More foreign networks seek Dreambox police probe”, Matthew Xuereb, 5 February 2012, <https://timesofmalta.com/articles/view/More-foreign-networks-seek-Dreambox-police-probe.405290>

<sup>227</sup> Joanknecht, <https://www.joanknecht.nl/copyright/>.

<sup>228</sup> Stichting BREIN, “BREIN loopt mee bij controles op verkoop illegale IPTV”, 20 June 2019, <https://stichtingbrein.nl/brein-loopt-mee-bij-controles-op-verkoop-illegale-iptv/>.

<sup>229</sup> Police operations as reported by the association Sygnał: <https://sygnał.org.pl/kategoria/akcje-policji/>

<sup>230</sup> Training sessions organised by Sygnał, <https://sygnał.org.pl/kategoria/szkolenia/>.



Country	
<b>PT – Portugal</b>	The Public Security Police ( <i>Polícia de Segurança Pública</i> ) collaborate with the General Inspectorate of Cultural Activities (IGAC), including in promoting the protection of IP rights. <sup>231</sup>
<b>RO – Romania</b>	<p>The police were mentioned under national IP action plans/strategies adopted by previous government decisions as one of the public authorities with competences in the fields of IP enforcement and the fight against piracy, thus cooperating with the Romanian Audiovisual Communications Association (ARCA).</p> <p>Additionally, there is a working group at the Prosecutor's Office, attached to the High Court of Cassation and Justice. The group includes all the public authorities with competences in the field of copyright and related rights, including the Romanian Copyright Office, the Romanian Trademark Office, the Customs Authority, the Border Police, the General Inspectorate of the Romanian Police, the Public Ministry or Ministry of Justice. It also includes intellectual and industrial property major stakeholders, collective management organisations, associations combatting piracy or dedicated to the study of IP rights and consumer associations. The group is divided into three sub-groups: anti-piracy, anti-counterfeiting, and collective management organisations.</p>
<b>SE – Sweden</b>	There is a dedicated division of the police in charge of investigating all IP infringements and IT related crimes. <sup>232</sup> The rightsholder, or his/her representative, is required to report an IP infringement to the police and report the crime to the Public Prosecutor. The police are also part of the group called Government Cooperation against Piracy, which works against IP violations.
<b>SI – Slovenia</b>	Infringements of copyright and/or related rights may be considered criminal offences. Proceedings shall be initiated by the rightsholders, who may file a criminal complaint with the police or the Office of the State Prosecutor. <sup>233</sup> A representative of the General Police Directorate is part of the Intragovernmental Working Group for the Fight against Piracy and Counterfeiting.
<b>SK – Slovakia</b>	The criminal police office of the Praesidium of the Police Force is in charge of addressing IP violations and computer crime beyond the region or the country, cooperating in particular with internet connection providers, domain administrators, associations for the protection of copyright and similar rights, expert and professional workplaces. It also creates conditions for solving problems related to the protection of intellectual property and cybercrime. <sup>234</sup>

<sup>231</sup> *Inspecção-geral das Atividades Culturais*, <https://www.igac.gov.pt/pedagogia-e-prevencao-do-direito-de-autor>

<sup>232</sup> Swedish police, <https://polisen.se/om-polisen/polisens-arbete/immaterielltattsbrott/>.

<sup>233</sup> Slovenian Intellectual Property Office (SIPO), <http://www.uil-sipo.si/sipo/office/about-us/ipr-enforcement/>

<sup>234</sup> Slovak Ministry of the Interior, <https://www.minv.sk/?sluzba-kriminalnej-policie-urad-kriminalnej-policie-prezidia-policajneho-zboru>.

Country	
<p><b>UK – United Kingdom</b></p>	<p>The British Police Intellectual Property Crime Unit (PIPCU)<sup>235</sup> is a department of the City of London Police. It was established in 2013 and was granted special investigative powers to deter serious and organised IP crime in the UK. It works in close collaboration with the Federation Against Copyright Theft (FACT), aimed at both illegal providers and consumers. In 2019, this collaboration led to the arrest of the operators of a pirate streaming service of sport content, Dreambox. The arrest led to a private prosecution brought by Premier League which resulted in the total jail sentences of 17 years – the longest sentences ever issued for piracy-related crimes.<sup>236</sup></p> <p>Additionally, several police units including PIPCU, Police Scotland, the Police Service of Northern Ireland (PSNI) and the Association of Chief Police Officers are part of the UK IP Crime Group founded in 2004. It brings together representatives from the private sector, enforcement agencies and government departments involved in tackling IP crime and infringement in the UK.<sup>237</sup></p>

### 5.3.1.2. The role of enforcement authorities in legal proceedings

Civil, criminal and administrative proceedings are available in all of the covered countries against IP infringements. In general, police authorities may be involved in different phases, from taking complaints from the harmed parties, i.e. rightsholders and end-users, and initiating proceedings, to conducting investigations and on-the-ground interventions. In a typical scheme, proceedings are initiated by rightsholders, their representatives or by the public prosecutor in the case of criminal offences.

In Latvia, for example, as regards criminal proceedings, rightsholders may file a complaint with the police as long as they are able to assess and prove substantial damage to their rights and interests under Section 148 of the Criminal Law.<sup>238</sup> The police can address copyright infringements as crimes and have the powers to issue administrative fines in the case of illegal transmission of TV broadcasts to the public.

End-users may also file complaints. Certain police authorities have set up means to facilitate the reporting of cyber-infractions, including IP infringement by users who fall victim to an illegal activity by an unauthorised TV broadcasting operator or service

<sup>235</sup> The Federation Against Copyright Theft (FACT) is an organisation sponsored by the film and video industry, to prosecute copyright violations, and works closely with public authorities, both in the UK and internationally, <https://www.fact-uk.org.uk/about-fact/>.

<sup>236</sup> FACT, “Thousands of subscribers to illegal streaming service warned by police”, <https://www.fact-uk.org.uk/thousands-of-subscribers-to-illegal-streaming-service-warned-by-police/>.

<sup>237</sup> Intellectual Property Office, The UK IP Crime Group, <https://www.gov.uk/government/publications/ip-crime-and-enforcement-for-businesses/the-uk-ip-crime-group>.

<sup>238</sup> Criminal Law (*Krimināllikums*), <https://likumi.lv/ta/id/88966-kriminallikums>.



provider, including via dedicated electronic hotlines, such as in Latvia.<sup>239</sup> In Greece, in addition to traditional means, users may contact the police using a dedicated portal,<sup>240</sup> or via its Twitter account.<sup>241</sup> In Belgium, internet users may report alleged IP infringements, committed on or via the internet on eCops, the Federal Police's online portal, which is then transferred to the competent police unit.<sup>242</sup>

In several covered countries, judicial and police authorities may initiate proceedings *ex officio* in cases of aggravating circumstances, such as organised crime, money laundering, fraud or crimes affecting public order and state security. In Malta, the Executive Police can file a court case before the competent Court of Magistrates, as per Chapter 9 of the Criminal Code.<sup>243</sup> In the Czech Republic, the police may initiate the proceeding *ex officio*, including against unidentified offenders, pursuant to section 158 of the the Penal Procedure Code.<sup>244</sup> In Sweden, where public interests require legal proceedings against copyright violation, public prosecutors may initiate criminal proceedings, under Article 59 of the Act on Copyright in Literary and Artistic Work.<sup>245</sup> In Denmark, the State Prosecutor for Serious Economic and International Crime may issue a notification to the police to initiate criminal proceedings, pursuant to Section 82 of the Copyright Act.<sup>246</sup> In Ireland, the Intellectual Property Crime Unit (IPCU) of the Irish police, *An Garda Síochána*, and the Director of Public Prosecutions may investigate and prosecute IP violations, including illegal online streaming services.<sup>247</sup>

Still within a typical operating scheme, police forces conduct investigations, collect evidence, conduct raids, make arrests, seize equipment and financial assets,

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<sup>239</sup> Latvian State Police, Valsts policija aiztur nelegālās televīzijas izplatītājus – vairāk nekā 200 mājsaimniecībām pārtraukts nelegālais pakalpojums, 31 January 2019, <https://www.vp.gov.lv/lv/jaunums/pabeigta-izmeklesana-lieta-par-nelegalas-televizijas-izplatisanu-riga-un-balvos>.

<sup>240</sup> Web portal of the Hellenic Police, [https://portal.astynomia.gr/webcenter/portal/digitalServiceElas/OnlineApplications/page129/Citizens1?\\_afRLop=166679062510414559&\\_adf.ctrl-state=gf57j7yke\\_21#](https://portal.astynomia.gr/webcenter/portal/digitalServiceElas/OnlineApplications/page129/Citizens1?_afRLop=166679062510414559&_adf.ctrl-state=gf57j7yke_21#).

<sup>241</sup> Greek police headquarters, Press release: A person was arrested by the Cybercrime Prosecution Directorate for violations of the laws on intellectual property and the protection of subscription services, 4 June 2020, [http://www.astynomia.gr/index.php?option=ozo\\_content&lang=%27.%27&perform=view&id=94920&Itemid=2470&lang=](http://www.astynomia.gr/index.php?option=ozo_content&lang=%27.%27&perform=view&id=94920&Itemid=2470&lang=) .

<sup>242</sup> Comment et où signaler délits ou pratiques frauduleuses commis sur ou via l'Internet ?, <https://www.police.be/5323/questions/comment-et-ou-signaler-delits-ou-pratiques-frauduleuses-commis-sur-ou-via-linternet>.

<sup>243</sup> Criminal code, <https://legislation.mt/eli/cap/9/eng/pdf>.

<sup>244</sup> Act no. 141/1961 Sb. (*Zákon č. 141/1961 Sb., o trestním řízení soudním (trestní řád*), <https://www.zakonyprolidi.cz/cs/1961-141>.

<sup>245</sup> Lag (1960:729) om upphovsrätt till litterära och konstnärliga verk, [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1960729-om-upphovsratt-till-litterara-och\\_sfs-1960-729](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1960729-om-upphovsratt-till-litterara-och_sfs-1960-729)

<sup>246</sup> Copyright Act (*Ophavsretslovens*), <https://www.retsinformation.dk/eli/lta/2014/1144>.

<sup>247</sup> An Garda Síochána, Press release: Four arrested in operation targeting illegal TV streaming 11 September 2018, <https://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/press-releases/2018/september/four-arrested-in-operation-targeting-illegal-tv-streaming-11th-september-2018.html>

among other operations. Courts may instruct the police to undertake specific actions. For example, in Belgium, a decision by the Supreme Court required the regional police and the Belgian Federal Computer Crime Unit (FCCU) to determine a list of domain names to block, to tackle the infringing activities of The Pirate Bay.<sup>248</sup> In Latvia, police forces raided around 500 public places broadcasting a boxing event, and ended up prosecuting 30 cases of illegal broadcasting, and imposing financial penalties.<sup>249</sup> In Italy, the *Guardia di Finanza* has executed a preventive seizure order by a local court at the request of the public prosecutor's office, targeting 58 infringing websites and 18 Telegram channels<sup>250</sup> which, through 80 million annual accesses, represent about 90% of audiovisual and editorial piracy in the country.<sup>251</sup> More recently, the *Guardia di Finanza* conducted an anti-piracy operation in Italy, coordinated by the Naples Public Prosecutor's Office. The operation code-named "Euro Strike 2020" led to the blocking of over 600 illegal streaming services of UEFA EURO 2020 matches.<sup>252</sup>

In certain covered countries, police forces have additional powers. For instance, in Lithuania, IP infringements fall under the competence of the police and public prosecution bodies which have the power to order injunctions and impose sanctions.

Measures applied by police forces are mainly targeted at criminals or alleged infringers but may also be aimed at intermediaries or end-users. In the UK, police forces may take action against the end-users of illegal streaming services. The Lancashire Police Cybercrime Unit issued warnings to subscribers of an illegal IPTV service, followed by cease and desist notices sent via e-mail.<sup>253</sup> The list of subscribers was discovered as a result of an arrest warrant served in connection with suspected illegal streaming.

#### 5.3.1.3. Cooperation with other public authorities and rightsholders and antipiracy associations

Cooperation between rightsholders' and anti-piracy associations and police authorities to tackle illegal audiovisual content distribution may take place within the framework of a voluntary agreement.

Such is the case, for example, in Latvia where the state police signed a cooperation agreement with the Association "For Legal Content" in 2017, aimed at

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<sup>248</sup> Belgian Supreme Court, (2e ch., sect. nl.), R.G. no P.13.0550.N, 22 October 2013.

<sup>249</sup> Sporta Centrs, "Brieža cīņa TV, internetā, krogā – legāli vai nelegāli?", 26 January 2018, [https://sportacentrs.com/bokss/26012018-brieza\\_cina\\_tv\\_vai\\_internetā\\_legāli\\_vai\\_n](https://sportacentrs.com/bokss/26012018-brieza_cina_tv_vai_internetā_legāli_vai_n).

<sup>250</sup> [https://telegram.org/faq\\_channels](https://telegram.org/faq_channels).

<sup>251</sup> *Guardia di Finanza*, "Operazione Evil web - Colpita la pirateria audiovisiva, editoriale e il sistema delle IPTV illegali", 23 Settembre 2015, <https://www.gdf.gov.it/stampa/ultime-notizie/anno-2020/settembre/operazione-evil-web-colpita-la-pirateria-audiovisiva-editoriale-e-il-sistema-delle-iptv-illegali>.

<sup>252</sup> UEFA, "UEFA welcomes anti-piracy operation conducted by the Guardia di Finanza in Italy", 18 June 2021, <https://www.uefa.com/returntoplay/news/026a-128cb173cd9f-0aaf3e3356ba-1000--uefa-welcomes-anti-piracy-operation-conducted-by-the-guardia-di/?iv=true>.

<sup>253</sup> FACT, "Thousands Of Subscribers To Illegal Streaming Service Warned By Police", 14 December 2020, <https://www.fact-uk.org.uk/thousands-of-subscribers-to-illegal-streaming-service-warned-by-police-2/>

reducing the activities of illegal TV programme and film distribution service providers in Latvia.<sup>254</sup> In Romania, the Romanian Audiovisual Communications Association (ARCA)<sup>255</sup> signed a collaboration protocol with the General Police Inspectorate in 2012 aimed at the implementation of activities in order to prevent and control IP infringements regarding television and radio programmes. In the UK, the British Police Intellectual Property Crime Unit (PIPCU) established the Infringing Website List (IWL),<sup>256</sup> an online portal containing a regularly updated list of IP infringing sites, with the help of rightsholders and competent bodies such as IAB UK, the British industry body for digital advertising.<sup>257</sup> The list, which is controlled by PIPCU, aims at disrupting advertising revenues from IP infringing websites, by dissuading advertisers, agencies and other intermediaries from being part of the supply chain of illegal activities. In Belgium, the Belgian Internet Service Providers Association (ISPA) has set up a contact point with the judicial police in order to facilitate the reporting of illegal activities, including IP infringements.<sup>258</sup>

In addition to enforcement operations, cooperation may focus on preventive and educational initiatives, including:

- the organisation of training sessions. In Poland, the police took part, together with other parties involved in combatting online piracy, in educational actions, such as a training session involving police officers from all over the country aimed at raising awareness about the illegal distribution of TV content developed by the Polish IP rights association, Sygnał.<sup>259</sup>
- participation in awareness-raising campaigns. In Latvia, an anti-piracy campaign "Do not lie to yourself – you steal!" was launched in 2018 by the association "For legal content" in cooperation with the state police, the Patent Office and the Ministry of Culture, with the aim of raising public awareness on online piracy of audiovisual content, including live sports.<sup>260</sup>

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<sup>254</sup> Association "For legal content!", <https://parlegalusaturu.lv/en/#cooperation>.

<sup>255</sup> Romanian Audiovisual Communications Association (ARCA), <http://audiovizual.ro/new/english-summary/>.

<sup>256</sup> IAB UK, The Infringing Website List (IWL), <https://www.iabuk.com/policy/infringing-website-list-iwl> and City of London Police, <http://news.cityoflondon.police.uk/r/1184/pipcu-disrupts-719-million-worth-of-ip-crime>.

<sup>257</sup> Internet Advertising Bureau (IAB), <https://www.iabuk.com/about-us>.

<sup>258</sup> ISPA, code of conduct, <https://www.ispa.be/code-conduct-fr/>.

<sup>259</sup> Sygnał, "The nationwide training program 'piractwo.tv' has been successfully completed!" 9 February 2020, <https://sygnal.org.pl/en/the-nationwide-programme-of-trainings-piractwo-tv-was-successful/>

<sup>260</sup> Ministry of Culture, association "For legal content!" launches anti-piracy social media campaign" (*Biedrība „Par legālu saturu!” uzsāk pretpirātisma sociālo kampaņu*), 7 February 2018, <https://www.km.gov.lv/lv/jaunums/biedriba-par-legalu-saturu-uzsak-pretpiratisma-socialo-kampanu-0>.

## 5.3.2. The impact of a coordinated approach through cooperation with Europol and Eurojust

Live and on-demand streaming of television content online, known as IPTV has led to market expansion and an increasing number of subscribers for legitimate services. However, unauthorised delivery of IPTV content is also on the rise. While illegal IPTV does not account for the majority of illegal streaming, it is arguably one of the most lucrative areas, sometimes involving money laundering and/or carried out by organised criminal groups.<sup>261</sup> In this context, greater cooperation and coordination between enforcement authorities at the European level, including national and European law enforcement agencies, were seen as particularly necessary.

### 5.3.2.1. Europol – European Union Agency for Law Enforcement Cooperation

Sports content piracy is sometimes part of wider organised criminal activities, involving large-scale piracy of audiovisual content<sup>262</sup> or trafficking of counterfeit products, including material that is used for illegal streaming, such as devices supporting IPTV technology.<sup>263</sup> Moreover, the complexity of investigating piracy related to organised crime may require the European Union’s law enforcement agency (Europol)<sup>264</sup> to send experts on the ground, to support its operations.<sup>265</sup> In 2017 and 2018, Europol supported six operations against organised crime groups involved in illegal IPTV crime, resulting in 24 arrests.<sup>266</sup>

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<sup>261</sup> According to an estimate by the European Union Intellectual Property Office (EUIPO), EUR 941.7 million of unlawful revenue was generated by copyright infringing IPTV providers in the EU in 2018 and these services were used by 13.7 million people in the EU (3.6% of the EU population). For further details, see “Illegal IPTV in the European Union, Economic, Legal and Technical analysis Report”, November 2019, <https://euipo.europa.eu/knowledge/course/view.php?id=3944>.

<sup>262</sup> IPC3 took part in investigations led by the Intellectual Property Crime Unit of the Cypriot Police, with the support of the Cybercrime Division of the Greek Police, the Dutch Fiscal Investigative and Intelligence Service (FIOD), the Cybercrime Unit of the Bulgarian Police and with the support of members of the Audiovisual Anti-Piracy Alliance (AAPA), to dismantle a crime group suspected of illegally distributing Greek, Cypriot and foreign pay-TV channels.

Europol, Press release: “Law enforcement and private sector join forces to shut down illegal streaming network”, 12 January 2018, <https://www.europol.europa.eu/newsroom/news/law-enforcement-and-private-sector-join-forces-to-shut-down-illegal-streaming-network>.

<sup>263</sup> The seized goods include illegal IPTV set-top boxes alongside counterfeit products, sports equipment, etc. Europol, Press Release: “Counterfeit crackdown hits two organised criminal groups with more than 30 suspects arrested”, 13 June 2019, <https://www.europol.europa.eu/newsroom/news/counterfeit-crackdown-hits-two-organised-criminal-groups-more-30-suspects-arrested>.

<sup>264</sup> Europol handles criminal intelligence and combats serious international organised crime through cooperation between competent authorities of EU member states.

<sup>265</sup> IPC3 supported an operation by the Cybercrime Unit of the Bulgarian General Directorate Combatting Organised Crime by deploying two experts on the ground in Bulgaria. The two officers exchanged information in real time and cross-checked operational data gathered against Europol’s databases. The six companies targeted by the operation were illegally distributing signals to over 30 000 subscribers.

Europol, Press release: “Huge hit to illegal IPTV distributors in Bulgaria”, 5 February 2020,



Europol's coordinated approach may be highlighted through various examples. In April 2017, under the code-name "Operation Kasper", a joint investigation led by the Spanish National Police, with the support of the Bulgarian authorities, Europol and the European Union Agency for Criminal Justice Cooperation, Eurojust, led to the dismantling of a criminal network illegally distributing pay-TV channels across Europe. The operation resulted in the arrest of eight suspects and the shutdown of the servers used to provide illegal access to the channels.<sup>267</sup>

In 2019, in an operation within the framework of the Joint Investigation Team (JIT), police forces from Spain, Denmark and the UK, as well as Europol, 14 simultaneous inspections were carried out in those countries, targeting the distribution of illegal IPTV signals. The intervention, which followed a complaint by the Premier League for alleged IP infringement by a Malaga-based website offering IPTV subscriptions with access to a multitude of international conditional access channels, dismantled a highly complex international technological infrastructure consisting of 11 server "farms" spread around the world, some of which had more than 44 servers, and led to the arrest of five offenders.<sup>268</sup>

More recently, in June 2020, a coordinated international law enforcement operation led by the Spanish National Police with the support of Europol and Eurojust, allowed the shutdown of an illegal IPTV streaming network based in Spain. The network was operating in various other EU member states and served more than two million paying subscribers worldwide. The intervention came after a complaint by Deutsche Fußball Liga (DFL), the Spanish Football League (LaLiga), NAGRA, Nordic Content Protection and the Alliance for Creativity and Entertainment (ACE); the latter was also involved on behalf of the content industry.<sup>269</sup> The operation targeted a network that illegally offered paid audiovisual content through IPTV and M3U<sup>270</sup> lists to more than

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<https://www.europol.europa.eu/newsroom/news/huge-hit-to-illegal-iptv-distributors-in-bulgaria>.

<sup>266</sup> EUIPO, Intellectual Property Crime Threat Assessment, 2019, [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2019\\_IP\\_Crime\\_Threat\\_Assessment\\_Report/2019\\_IP\\_Crime\\_Threat\\_Assessment\\_Report.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2019_IP_Crime_Threat_Assessment_Report/2019_IP_Crime_Threat_Assessment_Report.pdf).

<sup>267</sup> Europol, Press release: "One of Europe's biggest illegal IPTV distributors dismantled", 6 April 2017, <https://www.europol.europa.eu/newsroom/news/one-of-europe%E2%80%99s-biggest-illegal-iptv-distributors-dismantled>.

<sup>268</sup> Policía Nacional, "La Policía Nacional lidera la mayor operación a nivel europeo contra la distribución ilícita de señal a través de IPTV", 21 March 2019, [https://www.policia.es/es/comunicacion\\_prensa\\_detalle.php?ID=4176](https://www.policia.es/es/comunicacion_prensa_detalle.php?ID=4176).

<sup>269</sup> LaLiga, "International coalition brings down global piracy ring with 40,000 video channels and 2 million subscribers", 30 June 2020, <https://newsletter.laliga.es/global-futbol/international-coalition-brings-down-global-piracy-dfl-laliga-nagra-nordic-content-protection>.

<sup>270</sup> M3U stands for MP3 URL. It is a format mostly associated with audio playlists but has expanded to contain visual information and can be used for multimedia files. Multimedia players use M3U files to queue files for playback. It is one of the most widely-used formats on MP3 players for audio compilations and for live streaming, which is very popular in the IPTV industry.

An M3U file contains information on the media that you intend to add to your playlist. For IPTV services, you can add data on the channels you want to watch using a text file to edit and compile the file.

2 000 000 users around the world, using 50 servers, which generated profits of at least EUR 15 000 000.<sup>271</sup>

Europol's interventions illustrate the importance of multinational cooperation to take down large-scale piracy networks. Additionally, Europol takes part in cross-border cooperation with law enforcement from non-EU member states, such as Switzerland,<sup>272</sup> Canada and the United States.<sup>273</sup> Since July 2016, Europol and the European Union Intellectual Property Office (EUIPO) have joined forces and co-funded the Intellectual Property Crime Coordinated Coalition (IPC3).<sup>274</sup> IPC3 provides operational and technical support to law enforcement agencies and other partners in the EU and beyond. It does so by facilitating and coordinating cross-border investigations; monitoring and reporting online crime trends and emerging *modi operandi*; and raising public awareness and providing training to law enforcement. In particular, the specialised unit, which operates within Europol, has been instrumental in taking down websites used to sell counterfeit merchandise and to target pirated TV decoders.

#### 5.3.2.2. Eurojust – European Union Agency for Criminal Justice Cooperation

The European Union Agency for Criminal Justice Cooperation, Eurojust is another EU agency working in close collaboration with national authorities to combat a wide range of serious and complex cross-border crimes, including cybercrime.<sup>275</sup> Its tasks comprise coordinating parallel investigations and meetings, involving judicial and law enforcement authorities; setting up and/or funding the JIT (Joint Investigation Teams) for transnational criminal investigations; and planning coordinated joint action days involving national

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<sup>271</sup> Policía Nacional, “Golpe a un complejo entramado que ofrecía de manera ilícita mediante IPTV y listas M3U contenidos audiovisuales de pago a más de 2 000 000 de clientes de todo el mundo”, 11 June 2020, [https://www.policia.es/es/comunicacion\\_prensa\\_detalle.php?ID=3846](https://www.policia.es/es/comunicacion_prensa_detalle.php?ID=3846).

<sup>272</sup> Europol supported law enforcement from France, Germany, Monaco, the Netherlands and Switzerland to take down eleven servers for IP infringement.

Press Release: “Widely used illegal streaming platform switched off from Switzerland”, 11 November 2020, <https://www.europol.europa.eu/newsroom/news/widely-used-illegal-streaming-platform-switched-switzerland>.

<sup>273</sup> The investigation, supported by Europol and Eurojust, involved law enforcement authorities from a range of EU member states, alongside Canada and the United States.

Press Release: Illegal streaming service with over 2 million subscribers worldwide switched off, 10 June 2020, <https://www.europol.europa.eu/newsroom/news/illegal-streaming-service-over-2-million-subscribers-worldwide-switched>.

<sup>274</sup> Europol's Intellectual Property Crime Coordination Coalition (IPC3), <https://www.Europol.europa.eu/about-Europol/intellectual-property-crime-coordinated-coalition-ipc3>.

The IPC3 builds on the strategic agreement between Europol and EUIPO signed in 2013: Agreement on Strategic Co-operation between the Office for Harmonisation in the Internal Market and Europol, [https://www.Europol.europa.eu/sites/default/files/documents/Agreement\\_on\\_Strategic\\_Co-operation\\_between\\_the\\_Office\\_for\\_Harmonisation\\_in\\_the\\_Internal\\_Market\\_and\\_the\\_European\\_Police\\_Office.pdf](https://www.Europol.europa.eu/sites/default/files/documents/Agreement_on_Strategic_Co-operation_between_the_Office_for_Harmonisation_in_the_Internal_Market_and_the_European_Police_Office.pdf).

<sup>275</sup> Eurojust, <https://www.eurojust.europa.eu/about-us/what-we-do>.

authorities, for the purpose of arresting perpetrators, dismantling organised crime groups and seizing assets and material.

In March 2021, Eurojust and EUIPO signed a Service Level Agreement (SLA) to foster Eurojust's capacity and expand its expertise to support complex investigations in the field of IP infringement, by providing extra funding for Eurojust until the end of 2024.<sup>276</sup>

An illustration of Eurojust's support to crack down on large-scale IP infringement, is the multi-country Action Day carried out in 2019. The operation coordinated by Eurojust in The Hague led to the dismantling of an international criminal network committing massive pay-TV fraud in Germany, France and the Netherlands: over 200 servers were taken down and over 150 PayPal accounts were blocked.<sup>277</sup> In 2020, Eurojust took part in a coordinated Action Day at the request of the Italian authorities. Over 5 550 computer servers, that were used to illegally transmit and store live sports events were taken down in Italy, Bulgaria, France, Germany, Lithuania, Malta, Romania, Slovenia, Sweden and The Netherlands. In Italy, actions were led by the Public Prosecutor's Office (PPO) of Naples, the *Guardia di Finanza*, supported by the Postal and Communications Police, in close cooperation with the Italian desk at Eurojust.<sup>278</sup> More recently, in March 2021, following an investigation undertaken by ACE and the Premier League, collaboration between Eurojust, Europol and the Spanish National Police, led to the shutdown of Mobdro, one of the world's largest illegal IPTV apps, which provided access to several pirated sports channels worldwide and was accessible through a different set of compatible devices including Smart TVs, IPTVs, smartphones and tablets.<sup>279</sup> Mobdro had more than 100 000 000 downloads, and generated an estimated profit of EUR 5 000 000 from advertising.<sup>280</sup>

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<sup>276</sup> Eurojust, Press release: Stepping up cooperation to tackle intellectual property crime, 15 March 2021, <https://www.eurojust.europa.eu/stepping-cooperation-tackle-intellectual-property-crime>.

<sup>277</sup> Eurojust, Press release: Eurojust helps unravel massive trans-European pay-TV fraud, 18 September 2019, <https://www.eurojust.europa.eu/eurojust-helps-unravel-massive-trans-european-pay-tv-fraud>.

<sup>278</sup> Eurojust, "Eurojust coordinates action in Italy and ten other countries, taking down over 5 550 computer servers", 11 November 2020, <https://www.eurojust.europa.eu/new-major-crackdown-on-fraud-with-illegal-use-of-pay-TV-signals>.

<sup>279</sup> Eurojust, Press release: "Eurojust supports Spanish action against illegal streaming of football matches", 9 March 2021, <https://www.eurojust.europa.eu/eurojust-supports-spanish-action-against-illegal-streaming-football-matches>.

<sup>280</sup> Policía Nacional, "Desmantelada una infraestructura de emisión ilegal de contenidos audiovisuales que contaba con más de 100 000 000 descargas", 11 March 2021, [https://www.policia.es/es/comunicacion\\_prensa\\_detalle.php?ID=8541#](https://www.policia.es/es/comunicacion_prensa_detalle.php?ID=8541#).

### 5.3.3. Cooperation networks facilitating the work of prosecutors and law enforcement authorities

In the same dynamic, several networks were set up under the umbrella of EU agencies, with the aim of enhancing operational and strategic cooperation. The three main networks involving law enforcement authorities in the field of cybercrime are the European Intellectual Property Prosecutors Network (EIPPN), the European Judicial Cybercrime Network (EJCN) and the Network of National Experts on JIT.<sup>281</sup>

#### 5.3.3.1. EIPPN – the European Intellectual Property Prosecutors Network

The European Intellectual Property Prosecutors Network (EIPPN) was set up to expand the geographical scope of cooperation in the field of prosecution of cross-border IP related crimes. It covers EU member states, Norway and the USA. The main objective is to foster expertise and knowledge sharing, to help raise awareness among prosecutors and judges and to identify and develop up-to-date materials in order to reinforce the collective investigating and prosecuting powers of national prosecutors.

#### 5.3.3.2. EJCN – European Judicial Cybercrime Network

EJCN is an EU network of prosecutors and investigative judges specialised in cybercrime.<sup>282</sup> It was established by Council Conclusion of 9 June 2016 (10025/16) with the objective of facilitating the exchange of expertise and best practice, enhancing cooperation between the competent national judicial authorities.<sup>283</sup> Eurojust is in charge of providing support to the network – organising meetings, facilitating the day-to-day activities of the board, and assisting in the implementation of the EJCN's work programme.

#### 5.3.3.3. JIT – Joint Investigation Teams

The Network of National Experts on Joint Investigation Teams (JIT) was set up in July 2005.<sup>284</sup> It gathers national representatives from law enforcement, prosecuting and

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<sup>281</sup> EUIPO, "International judicial cooperation in intellectual property cases", March 2021, <https://op.europa.eu/en/publication-detail/-/publication/ea3f0ee0-86d1-11eb-ac4c-01aa75ed71a1>.

<sup>282</sup> The European Judicial Cybercrime Network (EJCN), <https://www.ejn-crimjust.europa.eu/ejn/PartnersDetail/EN/24#:~:text=The%20European%20Judicial%20Cybercrime%20Network,and%20criminal%20investigations%20in%20cyberspace>.

<sup>283</sup> Council of the European Union, Conclusions of the Council of the European Union on the European Judicial Cybercrime Network – Council conclusions (9 June 2016), <http://data.consilium.europa.eu/doc/document/ST-10025-2016-INIT/en/pdf>.

<sup>284</sup> Network of National Experts on Joint Investigation Teams, <https://www.ejn-crimjust.europa.eu/ejn/PartnersDetail/EN/15#:~:text=The%20Network%20of%20National%20Experts.exchanging%20experience%20on%20best%20practice>.

judicial authorities as well as appointed contact points representing EU institutions and agencies, such as Eurojust, Europol, European Anti-Fraud Office (OLAF), the European Commission and the Council of the European Union. Its objectives are to support the work of joint investigation teams, facilitate sharing experience and best practice and managing the grants awarded by Eurojust to subsidise cross-border investigation activities of joint investigation teams.

## 5.4. Administrative copyright enforcement and voluntary cooperation systems

The EU legal framework, in particular the IPRED,<sup>285</sup> allows member states to determine the conditions and procedures relating to injunctions, including by administrative means. While in most covered countries, IP enforcement is exclusively handled by the judicial system, some of the covered countries have also created (or empowered) administrative authorities with specific competences in addressing IP infringements and issuing administrative blocking orders. These administrative procedures aim to provide quicker and more responsive action than traditional judicial procedures against illegal streaming of audiovisual content, including sports events, where temporal constraints are particularly strong. The recourse to these bodies does not exclude the possibility of filing civil or criminal actions even if, where a case has already been filed before an administrative authority, the lawsuit will be suspended by the courts until the definition of the case before the administrative authority (e.g. Greece, Italy).

For example, Greece,<sup>286</sup> Italy,<sup>287</sup> Lithuania,<sup>288</sup> Spain<sup>289</sup> and France<sup>290</sup> have entrusted administrative authorities with the task of addressing IP infringement. The scope of responsibilities and powers granted to these administrative authorities are defined by law. Such authorities often have regulatory and supervisory powers in the field of copyright

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<sup>285</sup> Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32004L0048>.

<sup>286</sup> The Committee for the Notification of Copyright and Related Rights Infringement (EDPPI), <https://opi.gr/edppi/genikes-plierofories>.

<sup>287</sup> *Autorità per le garanzie nelle comunicazioni* (AGCOM), <https://www.agcom.it/>

<sup>288</sup> *Lietuvos radijo ir televizijos komisija* - RTK (The Radio and Television Commission of Lithuania - RTCL), <https://www.rtk.lt/en/the-radio-and-television-commission-of-lithuania>.

<sup>289</sup> *Comisión de Propiedad Intelectual - Sección Segunda* (Commission on Intellectual Property, Second Section), <http://www.culturaydeporte.gob.es/cultura/propiedadintelectual/informacion-general/gestion-en-el-ministerio/comision-de-propiedad-intelectual.html#:~:text=La%20Comisi%C3%B3n%20de%20Propiedad%20Intelectual,%C3%A1mbito%20de%20la%20propiedad%20intelectual>.

<sup>290</sup> A recently-adopted law on the regulation and protection of access to cultural works in the digital age has established ARCOM, a new authority from the merging of the HADOPI, the competent authority in tackling online piracy, and the CSA, the audiovisual media regulator.

and related rights protection on the internet. In Greece, Italy, Lithuania, and Spain, special bodies may issue administrative orders to block or disable access to illegal content or services and may impose fines in the case of non-compliance with issued decisions (e.g. Greece, Italy). In Italy, special fast-track administrative procedures are possible in urgent matters, where IP infringement is likely to cause considerable damages to copyright and related rightsholders. In France, the High Authority for the Distribution of Works and the Protection of Rights on the Internet (*Haute autorité pour la diffusion des oeuvres et la protection des droits sur internet* – HADOPI) could, until recently, send warnings to end-users and refer to authorities in the case of non-compliance.

In other countries (e.g. Denmark, Portugal), voluntary cooperation systems have been set up through codes of conduct and Memorandums of Understanding (MoU), sometimes under the aegis of public authorities, in order to combat online IP infringement more efficiently.

## 5.4.1. Administrative public bodies

### 5.4.1.1. France – HADOPI

The High Authority for the Distribution of Works and the Protection of Rights on the Internet (HADOPI) is an independent public authority in charge of fighting online IP infringement.<sup>291</sup> It is charged with promoting the development of legal offers and observing the legal and illegal use of works protected by copyright or related rights; protecting works from IP infringements online; and regulating and monitoring technical measures used for IP protection. Additionally, the HADOPI may recommend or be consulted by the government on legislative or regulatory amendments in the field of IP rights.<sup>292</sup> Rightsholders and their representatives may report IP infringements to this authority, which then has the power to address internet users with warnings and to impose fines.

In the case of IP infringement by internet users, the HADOPI's Commission for the Protection of Rights (*Commission pour la protection des droits* – CPD) adopts the “gradual response” (*riposte graduée*) procedure.<sup>293</sup> This prevention mechanism consists of reminding the holder of an internet connection of his/her obligation to ensure that it is not used to download or make available on peer-to-peer (P2P) networks works protected by copyright

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<sup>291</sup> The *Haute autorité pour la diffusion des œuvres et la protection des droits sur Internet* (Hadopi) was created in 2009, by Law No. 2009-669 of 12 June 2009, then reformed by Law No. 2009-1311 of 28 October 2009, which revoked the Hadopi's power to issue sanctions, after an intervention from the Constitutional Council. For further details, please see at: <https://hadopi.fr/organisation/presentation>.

<sup>292</sup> L.331-12 to L.331-37 of the Intellectual Property Code, [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006069414/LEGISCTA000020737679/#LEGISCTA000020740333](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006069414/LEGISCTA000020737679/#LEGISCTA000020740333).

<sup>293</sup> *Commission de protection des droits*, <https://hadopi.fr/organisation/commission-de-protection-des-droits>.

or related rights. The holder of an internet subscription may be a natural person or a legal person (such as an association, a company, a municipality, etc.). After three unsuccessful warnings, the CPD may decide to refer the matter to the judicial authority on the basis of the offence of gross negligence, which punishes the holder of an internet subscription who has not prevented the use of his/her connection for IP infringement purposes despite the warnings sent by the HADOPI. The maximum penalty is EUR 1 500 (or EUR 7 500 for legal persons). Although hundreds of thousands of warnings have been sent to internet subscribers since the law was enacted in 2009, very few court decisions have been rendered and the amounts have always been minimal (a few hundred euros).<sup>294</sup>

Lately, one of the HADOPI's powers came under scrutiny. In particular, an application was submitted to the Constitutional Council by associations representing internet users on the ground that the right of the HADOPI's agents to obtain, for the purposes of the procedure, from telecommunications operators, all data relating to subscribers whose internet connection has been used to commit an IP infringement (including identity, postal address, e-mail address and telephone number) without limiting the scope of these documents or providing sufficient guarantees, would violate the right to privacy, the protection of personal data and the secrecy of correspondence. The Constitutional Council found that the open list of personal data is unconstitutional, leaving the HADOPI with the possibility to require a closed list of data limited to identity, postal address, electronic address and telephone number.<sup>295</sup>

A new bill regarding the regulation and protection of access to cultural works in the digital age, which was promulgated on 25 October 2021,<sup>296</sup> notably establishes the creation of a new audiovisual regulator, the Audiovisual and Digital Communication Regulatory Authority (*Autorité de régulation de la communication audiovisuelle et numérique*, ARCOM)<sup>297</sup> on 1 January 2022. The creation of ARCOM, which will merge the existing HADOPI and CSA (*Conseil supérieur de l'audiovisuel*), aims to create an integrated regulator with extended competences, notably on the creative chain, from the setting of obligations to the protection of copyright and related rights and the fight against piracy. ARCOM will also be given new areas of competence in relation to digital content piracy. In particular, ARCOM will be given competences to identify infringing websites and notify intermediaries, using data transmitted by the rightsholders, for the purposes of blocking access, and to request search engines, directories and other indexing services to de-index infringing websites. In addition, ARCOM will have the power to extend courts' dynamic blocking orders to related domain names and mirror sites. The new law foresees

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<sup>294</sup> Hadopi, " La réponse graduée ", <https://hadopi.fr/organisation/reponse-graduee>.

<sup>295</sup> *Conseil Constitutionnel, Décision n° 2020-841 QPC du 20 mai 2020 - La Quadrature du Net et autres [Droit de communication à la Hadopi]*, 20 May 2020, <https://www.conseil-constitutionnel.fr/decision/2020/2020841OPC.htm>.

<sup>296</sup> Law No. 2021-1382 of 25 October 2021 on the regulation and protection of access to cultural works in the digital age (*LOI n° 2021-1382 du 25 octobre 2021 relative à la régulation et à la protection de l'accès aux œuvres culturelles à l'ère numérique*), <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000043339178/>.

<sup>297</sup> *Autorité de régulation de la communication audiovisuelle et numérique*.



agreements between rightsholders and intermediaries to guarantee the enforcement of court decisions and the establishment of a “blacklist” of infringing websites. In the case of non-compliance, intermediaries may be exposed to further legal action.

#### 5.4.1.2. Greece – Committee for the Notification of Copyright and Related Rights Infringement

In Greece, the Committee for the Notification of Copyright and Related Rights Infringement (EDPPI)<sup>298</sup> is established within the Hellenic Copyright Organisation (HCO), with specific competences on infringements of copyright.<sup>299</sup> The EDPPI is responsible for examining complaints of online IP infringements, provided that the same case is not pending before a court. The EDPPI may award dynamic blocking injunctions.<sup>300</sup> The dynamic blocking injunction has to be issued no later than 24 hours before the transmission of the event and can order the blocking or removal of illegal content within three days from the notification of the order.<sup>301</sup> The EDPPI may impose a fine for each day of non-compliance.<sup>302</sup> Rightsholders or their representatives may initiate a procedure by providing relevant evidence about IP infringement to support their claim and pay an administrative fee.<sup>303</sup> Their complaint is admissible on condition that alternative procedures provided for by ISPs have failed to put an end to the infringement. Infringements committed by end-users through downloading, streaming, or P2P file sharing are not addressed by the EDPPI. Additionally, the EDPPI regularly updates a list of domain names that have been blocked following EDPPI decisions.<sup>304</sup>

#### 5.4.1.3. Italy – AGCOM

In Italy, online copyright enforcement falls under the responsibility of the Italian Communications Authority (AGCOM),<sup>305</sup> an independent public regulatory authority.<sup>306</sup> It

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<sup>298</sup> The Committee for the Notification of Copyright and Related Rights Infringement (EDPPI), <https://opi.gr/edppi/genikes-plirofories>.

<sup>299</sup> Article 66E(2) of Law No. 2121/1993 on copyright and related rights, *Νόμος 2121/1993, Πνευματική Ιδιοκτησία, Συγγενικά Δικαιώματα και Πολιτιστικά Θέματα (Εισηγητική έκθεση για το ν. 2121/1993)*, <https://www.opi.gr/vivliothiki/2121-1993>.

<sup>300</sup> HCO, “Υπουργείο Πολιτισμού και Αθλητισμού: Ενισχύεται η προστασία της πνευματικής ιδιοκτησίας στο διαδίκτυο”, 29 July 2020, <https://www.opi.gr/epikairotita1/nea/9733-ypourgeio-politismoy-kai-athlismoy-enisxyetai-i-prostasia-tis-pnevmatikis-idioktisias-sto-diadiktyo>.

<sup>301</sup> That may be extended to up to 60 days by a decision of the Committee.

<sup>302</sup> Article 25 of Law No. 4708/2020 and Article 68 of Law No. 4761/2020, Νόμος 4761/2020 - ΦΕΚ 248/Α/13-12-2020 (Κωδικοποιημένος), <https://www.e-nomothesia.gr/kat-archaiotites/nomos-4761-2020-phek-248a-13-12-2020.html>.

<sup>303</sup> HCO, Procedural stages for the submission of the application, <https://opi.gr/en/committee/request-committee>.

<sup>304</sup> OPI, Decisions of the Committee, <https://opi.gr/index.php/en/committee/decisions-committee>.

<sup>305</sup> *Autorità per le garanzie nelle comunicazioni* (AGCOM), <https://www.agcom.it/>.

<sup>306</sup> Established by Law No. 249 of 31 July 1997.



has supervisory functions in the telecommunications, audiovisual, press, and postal services.

In 2013, AGCOM established an administrative procedure for the protection and public enforcement of copyright and related rights online.<sup>307</sup> According to this procedure, AGCOM can order ISPs to remove illegal content or disable access to websites or webpages hosting such content, within seven days from receipt of a complaint filed by rightsholders or their representatives. The outcome of a decision depends on the location of the server hosting the illegal content. If the server is located in Italy, AGCOM may order the hosting provider to remove the content. Where the server is located outside of Italy, AGCOM may issue a blocking order against internet access providers operating in Italy. In the case of failure to comply with the aforementioned orders within the term established by the decision, AGCOM is entitled to impose administrative fines.

The ordinary procedure is completed within a period of 35 working days.<sup>308</sup> However, according to changes introduced in 2018,<sup>309</sup> in the case of massive scale IP infringements involving a large number of works, repeated infringements, websites dedicated to piracy of recent works, AGCOM may conduct fast-track proceedings to be completed within 12 working days. According to this procedure, rightsholders can also apply for interim protective measures, based on a preliminary assessment of facts, where there is an alleged threat of imminent, serious and irreparable harm. In this case, AGCOM shall take appropriate measures within three days of receipt of the complaint. Defendants must comply with the AGCOM order within two days of notice of the order and can appeal the order within five days of the notice, even if the appeal does not suspend the order. If the order is not appealed within the term, it will remain a valid and final order.

Moreover, fast-track proceedings may also be launched, where the applicant has already obtained an order from AGCOM under an ordinary or special procedure but alleges

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<sup>307</sup> AGCOM adopted Resolution No. 680/13/CONS, Regulation on the protection of copyright on electronic communication networks and implementation procedures pursuant to Legislative Decree of 9 April 2003, No. 70 (*Delibera n. 680/13/CONS, Regolamento in materia di tutela del diritto d'autore sulle reti di comunicazione elettronica e procedure attuative ai sensi del decreto legislativo 9 aprile 2003, n. 70*), <https://www.agcom.it/documents/10179/540163/Delibera+680-13-CONS/2fb37939-620c-410d-a23f-2150d505b103?version=1.2>.

<sup>308</sup> AGCOM, Resolution No. 295/20/CONS on amendments and additions to the regulation regarding the protection of copyright on electronic communication networks and implementation procedures pursuant to Legislative Decree of 9 April 2003, No. 70, referred to in resolution No. 680/13/CONS and S.M.I. (*Delibera n. 295/20/CONS modifiche e integrazioni al regolamento in materia di tutela del diritto d'autore sulle reti di comunicazione elettronica e procedure attuative ai sensi del Decreto Legislativo 9 aprile 2003, n. 70, di cui alla Delibera n. 680/13/CONS e S.M.I.*), <https://www.agcom.it/documents/10179/19245163/Delibera+295-20-CONS/bf1fe922-e581-48ed-9acb-c6c6b27b5a7c?version=1.0>.

<sup>309</sup> AGCOM, Resolution No. 490/19/CONS, *Delibera n. 490/18/CONS, Modifiche al Regolamento in materia di tutela del diritto d'autore sulle reti di comunicazione elettronica e procedure attuative ai sensi del decreto legislativo 9 aprile 2003, n. 70, di cui alla delibera n. 680/13/CONS*, <https://www.agcom.it/documents/10179/12343059/Delibera+490-18-CONS/875626ba-5956-400f-baf4-86fd6ffbe073?version=1.1>.

that the violations are recurring. According to this special procedure, the applicant has to submit a mere notice to AGCOM, without starting a new ordinary or fast-track procedure. If AGCOM finds the notice of reiteration well grounded, within three days of the notice, where the servers are established in Italy, it shall impose fines on those responsible (from EUR 10 000 to EUR 250 000) and will inform the judicial authorities or, where the servers are not established in Italy, it shall update the list of blocked websites with which the access providers must comply.

In February 2021, AGCOM issued a significant blocking order against five illegal websites, which generated a monthly traffic of about 1 million visits in Italy.<sup>310</sup> The decision came after LaLiga filed a blocking request, between October 2020 and January 2021, to protect its rights in the country.

#### 5.4.1.4. Lithuania – Radio and Television Commission

The Radio and Television Commission of Lithuania (RTCL)<sup>311</sup> is an independent body accountable to the Seimas (Parliament), which regulates and supervises activities of audiovisual media services and video-sharing platforms falling under the jurisdiction of Lithuania. As of 1 April 2019, it enforces copyright and related rights protection on the internet.

The Radio and Television Commission may grant extrajudicial blocking injunctions for online IP infringements as specified in the Law on Copyright and Related Rights.<sup>312</sup> Rightsholders have to submit a request aimed at prohibiting the continuation of unlawful acts or preventing acts that may infringe or cause damage to IP rights. The request has to be corroborated by objective evidence of the infringement, as specified in Article 77 of the above-mentioned law. The intermediaries may be ordered to suspend transmission, eliminate or remove access to information infringing copyright, related rights or *sui generis* rights.

#### 5.4.1.5. Spain – Commission on Intellectual Property, Second Section

In Spain, the Second Section of the Commission on Intellectual Property (hereinafter the Second Section)<sup>313</sup> is in charge of safeguarding intellectual property, including through

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<sup>310</sup> LaLiga, “Golpe a la piratería en Italia gracias a LaLiga”, 15 February 2021, <https://www.laliga.com/es-GB/noticias/golpe-a-la-pirateria-en-italia-gracias-a-laliga>.

<sup>311</sup> The Radio and Television Commission of Lithuania (RTCL), <https://www.rtk.lt/en/the-radio-and-television-commission-of-lithuania>.

<sup>312</sup> Republic of Lithuania Law on Copyright and Related Rights (*Lietuvos Respublikos autorių teisių ir gretutinių teisių įstatymas*), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/5f13b560b2b511e59010bea026bdb259?ifwid=9tq147ogj>.

<sup>313</sup> <http://www.culturaydeporte.gob.es/cultura/propiedadintelectual/informacion-general/gestion-en-el-ministerio/comision-de-propiedad->



mediation and arbitration. It is an administrative body attached to the Ministry of Culture and Sports.<sup>314</sup> The Second Section's function is to restore legality in the digital field with respect to cases of IP infringement by those persons responsible for information society services (ISS), provided that they are acting directly or indirectly for profit or that their activity has caused or is likely to cause pecuniary damage to rightsholders. The Second Section acts exclusively at the request of rightsholders or their representatives, subject to the principles of legality, objectivity, proportionality and contradiction. It can order measures,<sup>315</sup> removal or blocking orders against two types of providers: (i) ISS providers that infringe IP rights on a large scale;<sup>316</sup> (ii) ISS providers that infringe IP rights by facilitating the description or location of works and services that are offered without authorisation, through an active and non-neutral activity and that are not limited to mere technical intermediation activities.<sup>317</sup>

Before any blocking or removal order is issued, the ISS provider must be notified so that, within a period of 48 hours, it may proceed to the voluntary withdrawal of the illegal content or, where appropriate, present arguments and submit evidence on the authorisation of use or the applicability of a limitation to the IP right in question. Once the previous term has elapsed, where appropriate, evidence shall be examined within two days and the interested parties shall be informed of the conclusions within a maximum term of five days. The Second Section shall issue a decision within a maximum period of three days. In the case of a lack of voluntary withdrawal, the Second Section may request the collaboration of the providers of ISSs, electronic payment services and advertising services, by requiring them to suspend the corresponding service that they provide to the infringing provider. The Second Section's decisions are without prejudice to any civil, criminal or administrative actions that may be taken in parallel.

In the period between 2012 and 2020, the Second Section received a total of 671 complaints from rightsholders, resulting in 677 infringing websites being affected by the Second Section's decisions, 300 of which were ordered to block or remove infringing content on the Spanish territory.<sup>318</sup> Those figures were achieved thanks to the possibilities offered by the new technological tools developed and provided by LaLiga, in the

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[intelectual.html#:~:text=La%20Comisi%C3%B3n%20de%20Propiedad%20Intelectual,%C3%A1mbito%20de%20la%20propiedad%20intelectual.](#)

<sup>314</sup> It was created by Law 2/2011 of 4 March on Sustainable Economy (*Ley 2/2011, de 4 de marzo, de Economía Sostenible*), <https://www.boe.es/buscar/act.php?id=BOE-A-2011-4117#:~:text=A%20los%20efectos%20de%20la,garantice%20el%20respeto%20ambiental%20y>.

<sup>315</sup> Such measures may include technical measures and specific duties of care required of the infringing provider aimed at ensuring the cessation of the infringement and preventing its resumption.

<sup>316</sup> Criteria used are based on the level of audience of the ISS in Spain, and on the number of protected works and services that can be accessed through the service or business model.

<sup>317</sup> For example, by offering ordered and classified lists of links to unauthorised copyright-protected works and services, regardless of whether such links may initially be provided by the recipients of the service.

<sup>318</sup> La Moncloa, "El Ministerio de Cultura y Deporte alcanza sus mejores resultados en la lucha contra la piratería en Internet", 30 June 2020, <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/cultura/Paginas/2020/300620-pirateria.aspx>

framework of the cooperation agreement between the Ministry of Education, Culture and Sports and LaLiga.<sup>319</sup>

## 5.4.2. Voluntary cooperation systems

### 5.4.2.1. Denmark – RettighedsAlliancen

In Denmark, the *RettighedsAlliancen*<sup>320</sup> (the Rights Alliance) is the leading organisation that specialises in the enforcement of copyright and related rights on the internet. It handles online IP infringements on behalf of the creative industry, which includes film, music, literature, text, images and design. The Rights Alliance has also collaborated with sports event organisers on several cases.

The Rights Alliance conducts investigations, documents IP infringements, and assists authorities and the State Prosecutor for Serious Economic and International Crime's (SØIK) IP Task Force<sup>321</sup> by guiding and consulting in connection with investigations, litigation, and blockings.

In 2014, a code of conduct was signed between the Telecommunications Industry Association (TIA)<sup>322</sup> and the Rights Alliance under guidance from the Ministry of Culture. The code allows collaboration with Danish ISPs, aiming to simplify and streamline the implementation of court decisions.<sup>323</sup> In 2020, the code was revised to keep up with developments in the illegal market.<sup>324</sup> When a blocking order is issued by a public authority, e.g. a court, the Rights Alliance notifies the Telecom Industry Association (Teleindustrien).<sup>325</sup>

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<sup>319</sup> In June 2017, the Ministry of Education, Culture and Sports and the National Professional Football League signed a Collaboration Agreement on the safeguarding of IP rights in the digital environment. For more details, please see at: *Resolución de 19 de junio de 2017, de la Secretaría General Técnica, por la que se publica el Convenio de colaboración con la Liga Nacional de Fútbol Profesional, en materia de salvaguarda de los derechos de propiedad intelectual en el entorno digital*, (see the annex for a description of the tools), [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2017-7507](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2017-7507)

<sup>320</sup> In 2011, the *RettighedsAlliancen* replaced the Anti-Piracy Group. For further details, please see at: <https://rettighedsalliancen.com/association/>

<sup>321</sup> In 2017, the Minister of Justice set up the IP Task Force under the State Prosecutor for Serious Economic and International Crime (SØIK) at the request of the Rights Alliance. This special unit focuses on organised and systematic IP crime. The government's decision to establish an IP Task Force was a major and important step in the fight against IP crime, at the same time recognising that it is a common challenge that requires a focused effort. In 2018, the Task Force became permanent.

<sup>322</sup> Telecommunications Industry Association, <https://www.teleindu.dk>.

<sup>323</sup> *Teleindustrien*, <http://www.teleindu.dk/wp-content/uploads/2014/10/TI-code-of-conduct-blokeringer.pdf>

<sup>324</sup> *RettighedsAlliancen*, May 2020, Agreement between the Rights Alliance and the Telecom Industry, <https://rettighedsalliancen.com/rights-alliances-publications/>.

<sup>325</sup> See section on the IP Task Force: *RettighedsAlliancen*, Annual Report 2018, p. 8,

<https://rettighedsalliancen.dk/wp-content/uploads/2020/04/rettighedsalliancens-annual-report-2018-.pdf>.

Under the code, blocking orders issued by a competent court shall be implemented by all ISPs adhering to the code, including their subsidiaries and other affiliated companies, within seven working days. The agreement implies that the ISPs shall also block additional website addresses, if the rightsholder proves that these websites circumvent the order by providing access to the same illegal content covered by the initial court order, including in the case that the infringing site changes its domain name (i.e. dynamic blocking). Practically speaking, the scope of blocking orders issued by a court may be extended to cover further illegal content, according to the same terms of the judicial decision.<sup>326</sup>

#### 5.4.2.2. Portugal – IGAC

In Portugal, the General Inspectorate of Cultural Activities (IGAC)<sup>327</sup> is the competent authority for the protection of copyright and related rights, and cultural development policies. Under Article 206 of the Copyright and Related Rights Code,<sup>328</sup> the IGAC is responsible for processing administrative offences and the general inspector of the IGAC is responsible for imposing fines.

In 2015, the IGAC concluded a MoU with rightsholder representatives, the anti-piracy group MAPINET, the Portuguese Association of Telecom Operators, the Portuguese Consumer Directorate-General, the organisation responsible for “.pt” domain registrations (DNS.PT), advertising associations and consumer associations. The MoU aims to facilitate the blocking IP infringing websites. Under this agreement, rightsholder representatives notify MAPINET of websites that are dedicated mainly to the infringement of copyright or related rights. MAPINET gathers the evidence submitted by the rightsholders’ representatives and lodges, at fixed times of the month, wide-ranging complaints to the IGAC. Each complaint by MAPINET collects together various notifications of pirate sites made by rightsholders’ representatives. Within 15 working days from receiving the complaints, the IGAC contacts ISPs to restrict access to the websites through DNS blocking. These blocks expire after a year, unless the IGAC determines otherwise. Additionally, the IGAC simultaneously informs the associations representing advertisers so that their members exclude the affected websites concerned from the inclusion of advertising. The parties have the right to lodge a judicial or administrative recourse.

In December 2018, a new MoU was signed by the IGAC, the association representing Telecom Operators and associations representing producers, resellers and

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<sup>326</sup> European Parliament, “Challenges facing sports event organisers in the digital environment”, December 2020, p. 60, [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_STU\(2020\)654205](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2020)654205)

<sup>327</sup> *Inspecção Geral das Actividades Culturais* (General Inspection of Cultural Activities), <https://www.igac.gov.pt/inicio>.

<sup>328</sup> Copyright and Related Rights Code – Law Decree No. of March 14, 1985 (*Código do Direito de Autor e dos Direitos Conexos - DL n.º 63/85, de 14 de Março*), [http://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=484&tabela=leis&so\\_miolo=](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=484&tabela=leis&so_miolo=)

video authors, to facilitate the temporary blocking of illegal transmissions of sports events on the internet, (especially of football matches), which require faster action by their very nature (dynamic injunctions).

Since the new MoU came into force in January 2019, 12 736 illegal streams of national football championship matches have been identified. All the streams have been subject to blocking attempts, ok refused by these two entities.

## 5.5. The use of technology in copyright protection

Online piracy relies heavily on a large range of technologies, including apps, software and devices. Likewise, technology can also be used in the fight against piracy. In the case of live sports events, the need for expeditious action and enforcement has pushed rightsholders to take the lead and adopt preventive strategies to avoid or, at least, to mitigate the effects of online piracy. These strategies involve the use of sophisticated technologies aimed at protecting IP rights, through encryption, monitoring, content watermarking, geolocation, and content take-down technologies. Different technologies can be combined to ensure a higher level of protection.

Despite the availability of several technical remedies, enforcement remains quite challenging. First, there is the effort needed for monitoring and identifying infringing service providers. Second, using or developing monitoring and enforcement technologies is costly. At the same time, it remains technically easy for copyright infringers to circumvent blocking orders. For instance, illegal content services tend to use technologies to render content take-down difficult to implement by online platforms, such as cloud-based content delivery networks and DDoS protection<sup>329</sup>/web application firewall services, that can be used to effectively hide the true origin of the illegal content and make traditional notice-and-action processes difficult to implement. Moreover, some rightsholders have reported that some online platforms are slow to respond to take-down notices, or simply do not respond at all. In some cases, no contact details are available to send take-down notices or the ones provided are false.

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<sup>329</sup> A Denial-of-Service attack (DoS attack) is a cyber-attack that causes temporary or indefinite disruption of communication services and information systems, thus making resources unavailable to end-users. In a Distributed Denial-of-Service (DDoS), the attack originates from several different sources. European Network and Information Security Agency (ENISA), EISAS – “European Information Sharing and Alert System for citizens and SMEs: A Roadmap for further development and deployment”, 2011, [https://www.enisa.europa.eu/publications/eisas\\_roadmap/at\\_download/fullReport](https://www.enisa.europa.eu/publications/eisas_roadmap/at_download/fullReport).

## 5.5.1. Content protection technologies and their use

Based on the principle that technology should be used proportionately and should not lead to overblocking, several technical remedies are used in the field of copyright protection. These apply at different levels, from the production and distribution of content (e.g. through the incorporation of watermarks and fingerprints to encrypt content), to the monitoring and enforcement phase once the acts of infringement have taken place (e.g. geolocation, geo-blocking and content take-down tools).

### 5.5.1.1. An overview of existing content protection technologies

#### 5.5.1.1.1. Encryption

Encryption is a process by which rightsholders (or in the case of live transmission, rightsholders or broadcasters) encode/scramble information so that only the intended public can view it, i.e. subscribers of the services or purchasers of the single transmitted event.<sup>330</sup> Authorised users may access the streaming using an encryption key.

Recently, British Telecom (BT) stepped up its efforts to combat the illegal piracy of its premium subscription-based content through a new partnership with leading video infrastructure company, ATEME.<sup>331</sup> Under this cooperation, BT used ATEME's sophisticated encryption techniques to protect satellite uplinked content, making BT the first broadcaster in the UK to provide the industry with ATEME's encoder which uses BISS-CA (Basic Interoperable Scrambling System Conditional Access) encryption.<sup>332</sup> Its first use of ATEME's encoder was to secure BT Sport's transmission of a football game, in August 2019. It then continued to be used to protect each of BT Sport's Premier League live broadcasts for the following football season.

#### 5.5.1.1.2. Watermarking

Watermarking helps identify the content source for effective anti-piracy action to be taken. Technically speaking, this technology adds "an invisible digital signature" to the content. It embeds information about ownership and licensing. Such information enables

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<sup>330</sup> Max Wilbert, dacast, "7 Secure Video Streaming Methods and Platforms for Professionals", 16 April 2021, <https://www.dacast.com/blog/secure-video-streaming/>.

<sup>331</sup> BT, "BT takes action to combat TV broadcasting piracy", 9 January 2020, <https://newsroom.bt.com/bt-takes-action-to-combat-tv-broadcasting-piracy/>.

<sup>332</sup> Op. cit. "The BISS-CA encryption is an open, interoperable and secure standard of the BISS protocol with dynamic rolling key support for encryption to help broadcasters in the fight against piracy."

the tracking of illegal copying and redistribution of content, by comparing matching watermarks.<sup>333</sup>

Watermarking may be circumvented using several techniques implying visible transformations on the streamed audiovisual content, such as resizing of the video, mirroring, cropping, collusion, or the scrambling of small sections of video frames that have similar chroma and luminosity, to confuse a watermark analysis tool.<sup>334</sup> However, efficient watermarking technologies, with robust algorithms making reverse engineering difficult, are able to resist attempts to affect the watermarking.

In 2012, in order to fight against the escalating online piracy of its games, the Premier League started adding a watermark logo to its broadcasts.<sup>335</sup> At the same time, watermarking is also used by online pirates who use logo blocking techniques to hide or alter the logo of licensed distributors. In the UK, the use of logo blocking and illegal watermarking techniques were considered as “aggravating” circumstances by a local court.<sup>336</sup>

#### 5.5.1.1.3. Fingerprinting

Fingerprinting uses special algorithms to extract and compress characteristic components of a video to help track illegal copies by comparing matching fingerprints.<sup>337</sup> Current technologies allow the fingerprinting process of live streams, including of user-generated content online, as fingerprints may be generated automatically during the streaming, with a high level of precision that can detect footage that has been altered by users.

Several online platforms offer fingerprinting technologies, such as YouTube’s Content ID, which allows rightsholders to identify and report illegal content that may appear on its platform. The technology allows the automatic analysis of uploaded content and its comparison with the files provided by the content owners. Since 2017, Content ID

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<sup>333</sup> NetResult, “Update on Digital Piracy of Sporting Events 2011”, [https://www.wipo.int/export/sites/www/ip-sport/en/pdf/piracy\\_report\\_2011.pdf](https://www.wipo.int/export/sites/www/ip-sport/en/pdf/piracy_report_2011.pdf).

<sup>334</sup> Cartesian, “Video Watermarking and the Battle against Piracy”, 23 September 2019, <https://www.cartesian.com/video-watermarking-and-the-battle-against-piracy/>

<sup>335</sup> WorldSoccerTalk, “Premier League Adds Its Logo To Broadcasts In Fight Against UK Pubs”, Christopher Harris, 4 February 2012, <https://worldsoccertalk.com/2012/02/04/premier-league-adds-its-logo-to-broadcasts-in-fight-against-uk-pubs/>.

<sup>336</sup> Premier League, “Illegal stream organisation jailed for total of 17 years”, 20 March 2019, <https://www.premierleague.com/news/1110569?sf209672524=1>

<sup>337</sup> EUIPO, Automated Content Recognition: Discussion Paper – Phase 1 “Existing technologies and their impact on IP”, November 2020, [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2020\\_Automated\\_Content\\_Recognition/2020\\_Automated\\_Content\\_Recognition\\_Discussion\\_Paper\\_Full\\_EN.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2020_Automated_Content_Recognition/2020_Automated_Content_Recognition_Discussion_Paper_Full_EN.pdf).



has allowed LaLiga to submit claims on over 600 000 items of illegal content every year.<sup>338</sup>

#### 5.5.1.1.4. Geolocation and geo-blocking

Geolocation is the identification of users' location through their IP address. Geo-blocking is used to prevent or restrict users, from a particular geographical area, from accessing certain content or servers. IP addresses are matched against a blacklist or whitelist to determine access rights. It is generally used to ensure that territorial licensing is protected, so that only official licensees in the area can legally provide access to the licensed content.

#### 5.5.1.1.5. Content take-down tools

Content take-down tools are commonly used to remove illegal content expeditiously.<sup>339</sup> They are built-in applications that are made available by IT companies for rightsholders or their representatives, allowing them to remove content, including live streams (using live take-down tools), directly from online platforms or hosting services.

### 5.5.1.2. The use of copyright protection technologies by sports event organisers and rightsholders

Here is an overview of existing technical remedies that are used by some of the major sports event organisers and rightsholders for the protection of audiovisual sports content.

**Table 9. Technologies used for copyright enforcement online**

Technologies including encryption, content watermarking, monitoring and take-down, geolocation and other.

Sports event organiser	Technology
<b>ES – LaLiga (Spanish Football League)</b>	<p><b>Encryption, content watermarking and geolocation</b> are implemented by broadcasters which acquire the audiovisual rights to broadcast LaLiga's competitions.</p> <p>LaLiga monitors social media, streaming sites and illegal IPTVs, pirate</p>

<sup>338</sup> LaLiga, "LaLiga incorporates YouTube's Content ID tool into anti-piracy campaign", 20 May 2017, <https://www.laliga.com/en-GB/news/laliga-incorporates-youtubes-content-id-tool-into-anti-piracy-campaign>

<sup>339</sup> Op. cit., NetResults, pp. 22 and 29



Sports event organiser	Technology
	<p>mobile applications where its competitions are made available without LaLiga's authorisation.</p> <p>Regarding the take-down of the illegal broadcast or content pertaining to LaLiga's matches, it is the service providers that take down the illegal content notified by LaLiga.</p>
<p><b>UK – FAPL (English Premier League)</b></p>	<p><b>Encryption:</b> FAPL licensees/broadcasters have encryption for satellite and Over-the-Top (OTT).</p> <p><b>Content watermarking and fingerprinting:</b> digital fingerprinting is used as the basis for verifying content prior to sending take-down notices and in content recognition systems provided by some streaming platforms.</p> <p><b>Monitoring and take-down:</b> the FAPL uses contractors to monitor the online environment and send notices to various intermediaries.</p> <p><b>Geolocation:</b> broadcasters acquire exclusive territorial licenses and use geo-blocking technologies.</p>
<p><b>International Olympic Committee (IOC)</b></p>	<p><b>Content fingerprinting:</b> the IOC makes use of the automated content recognition technologies provided by social media platforms, where available, to facilitate take-down of live and on-demand content. Rightsholders provide a reference video/audio stream to online platforms, which uses that reference to automatically identify and flag attempts to upload the same content to online platforms by other users. In most cases, depending on the configuration, these uploads are immediately blocked, and the offending users are notified immediately by online platforms. In such cases the content owner is not involved. In other instances, where the fingerprint match is more marginal, the match may be referred to the content owner for manual review.</p> <p><b>Monitoring and take-down:</b> Infringing sites are identified using keyword searches, covert investigation, monitoring social media activity and consulting databases of known infringing/linking sites. Website take-downs take the form of DMCA (Digital Millennium Copyright Act) copyright notices/abuse notifications and are initially targeted at the individual site operators' contacts, and then escalated to the hosting provider and, if needed, to the ISP.</p> <p><b>Geolocation:</b> the IOC requires its licensed broadcasters to implement geo-restriction capabilities on all content distributed digitally on OTT or on social media platforms. Furthermore, broadcasters are required to implement virtual private network (VPN) detection to block access to users</p>



Sports event organiser	Technology
	who use VPN services to hide their real location.
UEFA	<p><b>Encryption:</b> UEFA undertakes the technical distribution (in cooperation with the European Broadcasting Union (EBU) of multilateral live signals (by both satellite and internet streaming) to its broadcast partners worldwide. The BISS-CA (Basic Interoperable Scrambling System Conditional Access) protocol is used to protect the video signals worldwide. BISS-CA is an open, interoperable and secure conditional access standard of the BISS protocol including a dynamic/rolling key system for encryption.</p> <p><b>Monitoring and take-down:</b> UEFA uses specialised anti-piracy agencies to monitor and send take-down notices. Fingerprinting reference technology is used to match detected illegal streams. Where available, UEFA uses the automated content recognition technologies provided by certain social media platforms (Facebook and YouTube) to facilitate take-down of both live and Video on Demand (VOD) content. Twitch and Streamable provided take-down tools.</p> <p><b>Geolocation:</b> UEFA requires its broadcast partners to geo-block all content distributed to their respective domestic audiences (including via terrestrial, satellite, internet and mobile broadcast platforms) so that it is only available in their licensed territory.</p>

Source: European Audiovisual Observatory's questionnaire to SROC members

### 5.5.1.3. Cooperation with stakeholders

Sports event organisers work in close cooperation with all industries involved in the distribution of audiovisual content, for the use and implementation of technical measures. This includes cooperation with licensees, i.e. broadcasters and content distributors, for the use of content protection and identification technologies, encryption, watermarking, fingerprinting and geolocation. For content monitoring and take-down, major video-sharing platforms and social networks offer content identification solutions, such as YouTube's Content ID, which allows the automatic identification and flagging of attempts to upload illegal content, including repeated uploads of the same illegal content.<sup>340</sup> When it comes to ISPs, hosting services, search engines and other intermediaries, they may

<sup>340</sup> YouTube, "How Content ID works", <https://support.google.com/youtube/answer/2797370?hl=en>.

provide assistance for de-indexing and taking down content and blocking access to websites and servers.

**Table 10. Cooperation with stakeholders**

Sports event organiser	Stakeholders
<p><b>ES – LaLiga (Spanish Football League)</b></p>	<p><b>Broadcasters:</b> LaLiga collaborates closely and mutually with its licensees (broadcasters) in the protection of LaLiga's content.</p> <p><b>Internet Service Providers:</b> LaLiga maintains a close collaboration with the Spanish company Telefónica regarding anti-piracy measures.</p> <p><b>Search engines:</b> LaLiga also collaborates with and receives assistance from Google for the de-indexing of infringing sites from the results of Google's search engine.</p> <p><b>Online platforms:</b> over the past years, LaLiga has established a collaborative relationship with many social media and online platforms for the removal of unauthorised content including YouTube, Facebook and Twitter, among others.</p> <p><b>Other rightsholders:</b> LaLiga collaborates with many other rightsholders in the sports sector such as Dorna Sports or Jupiler Pro League, among others.</p>
<p><b>UK – FAPL (English Premier League)</b></p>	<p><b>Broadcasters:</b> The FAPL has daily exchanges with broadcasters on anti-piracy measures.</p> <p><b>Internet service providers:</b> cooperation through blocking orders in the UK, in Ireland, in Norway and a number of other countries outside Europe – no voluntary cooperation.</p> <p><b>Search engines:</b> FAPL uses Google's standard reporting mechanism and reports infringing search results via a specialist monitoring company.</p> <p><b>Hosting services:</b> FAPL has good relationships with a number of hosting providers and CDNs and is able to use a mixture a love take-down tools and reporting systems to disrupt streams in real-time. Other hosting services do not provide real-time take-downs and a number of rogue companies provide little cooperation.</p> <p><b>Online platforms:</b> content recognition technologies are provided by YouTube (Content ID) and Facebook (Rights Manager), Twitch has a real-time take-down tool, while no solution has been provided by Twitter.</p> <p><b>Set-top boxes manufacturers:</b> no cooperation from manufacturers. The PL relies on criminal cases in the UK, such as the case where three</p>



Sports event organiser	Stakeholders
	<p>sellers of illegal devices from a pirate streaming organisation were jailed for defrauding FAPL.<sup>341</sup></p> <p><b>Other rightsholders:</b> cooperation happens through networks such as SROC,<sup>342</sup> AAPA<sup>343</sup> and bilateral contacts. Other sports make witness statements in legal cases.</p>
<p><b>International Olympic Committee (IOC)</b></p>	<p><b>Broadcasters:</b> the IOC’s partnership with broadcasters mainly focuses on the promotion of official broadcasting platforms. Where content watermarking is used, broadcasters are provided with illegal content samples to help with the identification of illegal content.</p> <p><b>Internet service providers:</b> the IOC and its partners notify major ISPs which are known to be used for hosting illegal content ahead of major events to prepare these providers for an influx of take-down requests.</p> <p><b>Search engines:</b> The IOC engages with search engines regarding promotional efforts to highlight official platforms and also to request the removal of infringing links.</p> <p><b>Hosting services:</b> the IOC and its partners notify major hosting service providers who are known to be used for hosting illegal content ahead of major events to prepare these providers for an influx of take-down requests.</p> <p><b>Online platforms:</b> certain social media and video-sharing platforms provide content recognition tools to allow the automatic take-down of live and recorded illegal content. The IOC and its partners also engage with all platforms in the lead-up to major events to ensure that adequate resources and escalation paths are available to ensure the rapid take-down of illegal content.</p>
<p><b>UEFA</b></p>	<p><b>Broadcasters:</b> UEFA works collaboratively and has regular discussions with its broadcast partners on anti-piracy issues and initiatives</p> <p><b>Search engines:</b> UEFA has recurring meetings and discussions with Google, UEFA’s anti-piracy vendors are part of the TCPRP (Trusted Copyright Removal Program), and actively use Google’s reporting</p>

<sup>341</sup> Premier League, “Three sellers of illegal devices from pirate streaming organisation jailed for defrauding Premier League”, 20 March 2019, <https://www.premierleague.com/news/1110569>.

<sup>342</sup> Sports Rights Owner Coalition, <https://www.sroc.info/>.

<sup>343</sup> Audiovisual Anti-Piracy Alliance, <https://www.aapa.eu/>.



Sports event organiser	Stakeholders
	<p>mechanisms to request the delisting/demotion of infringing sites..</p> <p><b>Hosting services:</b> UEFA notifies numerous hosting service providers, but unfortunately the majority of them provide little to no cooperation.</p> <p><b>Online platforms:</b> UEFA has engaged with Facebook, YouTube and TikTok to establish a direct line of communication and collaboration. Twitch and Streamable provided UEFA with take-down tools.</p> <p><b>Other sports event organisers:</b> UEFA is a member of SROC, and also has discussions with other football leagues and sports event organisers.</p>

Source: European Audiovisual Observatory's questionnaire to SROC members

## 5.5.2. The different economic approaches and the use of copyright protection technologies

In most cases, sports event organisers and rightsholders use services and technologies provided by third-party companies to protect their content online. However, due to the surge in online piracy and the constant need to address recurrent threats, several sports event organisers have reviewed their strategy, dedicating further resources to content protection technologies. Some have stepped up their partnerships with these IT companies by making direct investments, as is the case with the Deutsche Fußball Liga – DFL (Germany); by creating their own companies that develop in-house technologies, as is the case with LaLiga (Spain); or by collaborating with sports event organisers counterparts as is the case between Pro League (Belgium) and LaLiga (Spain).

### 5.5.2.1. DFL: defending “ryghts” through investment

In Germany, the Deutsche Fußball Liga (DFL) has signed a cooperation agreement with Athletia as part of the “DFL for Equity” investment strategy in order to address piracy on web streaming and IPTV.<sup>344</sup> Under this agreement, a joint venture, “ryghts”, was created, in which the DFL will hold a share. Since the agreement was signed, in 2019, ryghts has monitored all illegal international broadcasting of Bundesliga games. This partnership has allowed the DFL to expand its business model and develop technological solutions to fight against piracy that could also benefit other sports leagues.

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<sup>344</sup> DFL, “DFL for Equity: DFL and Athletia establish joint venture to monitor international piracy”, 7 August 2019, <https://www.dfl.de/en/news/dfl-for-equity-dfl-and-athletia-establish-joint-venture-to-monitor-international-piracy/>.

### 5.5.2.2. LaLiga’s “do it yourself” approach

In Spain, LaLiga uses an in-house developed tool to fight against piracy in different environments, including social media, streaming sites and illegal IPTVs, pirate mobile applications, among others. LaLiga has invested in human and technical resources, including for technologies used in the fight against piracy.<sup>345</sup> After many years of tackling piracy, LaLiga has created its own anti-piracy services company. This focuses on the development, commercialisation and evolution of software applications or tools for the purpose of technological protection of audiovisual content and/or intellectual property rights and the provision of all related services. LaLiga can count on its Technological Protection of Content Department to develop in-house solutions, including in the field of copyright protection. . In addition, LaLiga has set up its own anti-piracy lab which has enabled it to develop a considerable number of valuable tools including:<sup>346</sup>

- **Marauder** – LaLiga’s first system which was launched to help the geolocation of illegal websites, social media accounts and apps, by producing a map.
- **Lumière** – a tool that analyses web pages to collect information about ownership, the location of their servers, whether or not they have ads or Google Analytics code, among other things. Such information may later be used as evidence and help with further investigations.
- **Blackhole** – a large database of IPTV that allows the tackling card sharing.
- **NEKO** – a tool that allows the reporting of infringements to social media platforms in a quicker and more efficient manner.

**Table 11. Cooperation and outsourcing to external companies for copyright enforcement technologies**

Sports event organiser	Partner companies
<p><b>ES – LaLiga (Spanish Football League)</b></p>	<p>LaLiga uses an in-house developed tool to fight against piracy in different environments, including social media, streaming sites and illegal IPTVs, pirate mobile applications, among others.</p> <p>After many years of fighting piracy, LaLiga has created its own anti-piracy services lab. This focuses on the development, commercialisation and evolution of software applications or tools for</p>

<sup>345</sup> LaLiga receives I+D+i certifications that endorse its work in technology and innovation:

<https://www.laliga.com/noticias/laliga-recibe-certificaciones-idi-que-refrendan-su-labor-en-materia-tecnologica-y-de-innovacion>.

More on LaLiga’s efforts in fighting copyright infringement: <https://noesfutebol.laliga.elmundo.es/directos-al-futuro/como-trabaja-laliga-para-frenar-la-pirateria>

<sup>346</sup> LaLiga, “Tecnología y compromiso para acabar con la piratería audiovisual”,

<https://newsletter.laliga.es/futbol-global/tecnologia-y-compromiso-para-acabar-con-la-pirateria-audiovisual>

	the purpose of technological protection of audiovisual content and/or intellectual property rights and the provision of all related services.
<b>UK – FAPL (English Premier League)</b>	Rather than to rely on one service provider to cover all services, FAPL uses a network of best expert vendors covering a range of workstreams. These include, FriendMTS <sup>347</sup> for tackling piracy of live content, Athletia <sup>348</sup> for infringing live and VOD content on social media and Leak ID <sup>349</sup> for search engine delisting.
<b>International Olympic Committee (IOC)</b>	The IOC's partners for content protection include: Friend MTS for live content protection including monitoring and take-down of infringing websites and social media platforms during the Summer and Winter Olympic Games; Athletia for monitoring and take-down of social media platform content for the Olympics archive content; and Smart Protection <sup>350</sup> for removing live events/live linear feed replications on streaming platforms and references from search engines and social media platforms, in periods outside the Olympic Games calendar.
<b>UEFA<sup>351</sup></b>	UEFA uses two specialised anti-piracy agencies: (i) Athletia Sports to provide detection, monitoring and enforcement services in relation to live and non-live pirated content made available on commonly used social media platforms, GIF providers and messaging services; (ii) Friend MTS to provide detection, monitoring and enforcement services in relation to live and non-live pirated content made available on all internet-based platforms and services (for example, websites, illegal IPTV services, P2P and illegal apps) other than social media platforms.

Source: European Audiovisual Observatory's questionnaire to SROC members

### 5.5.3. Cooperation with public authorities on the use of technologies

In certain covered countries, content protection technologies are part of a range of strategies to combat online piracy.

In Latvia, the media regulator NEPLP (National Electronic Mass Media Council) introduced new and more powerful television retransmission monitoring software, in

<sup>347</sup> Friend MTS, <https://www.friendmts.com/>.

<sup>348</sup> Athletia, <https://athletia.net/index.php>.

<sup>349</sup> Leak ID, <https://leakid.com/>.

<sup>350</sup> Smart Protection, <https://smartprotection.com/en/>.

<sup>351</sup> Union of European Football Associations, <https://www.uefa.com/>.



2021.<sup>352</sup> It enabled the identification of the illegal retransmission of TV programmes on several websites. In accordance with the Electronic Media Law, and after receiving a formal warning from the NEPLP, illegal distribution was stopped on eight websites, but access to 35 websites was restricted for a period of up to six months. At the same time, warnings have been issued in five more cases and time has been given to obtain the necessary retransmission permit or to otherwise stop retransmission.

In Spain, the Ministry of Education, Culture and Sports and LaLiga signed an agreement in 2017 to combat piracy and strengthen the defence of IP rights online.<sup>353</sup> Under this agreement, LaLiga provided a free and non-exclusive use licence for Lumière, an anti-piracy system developed by LaLiga, to the Second Section of the Intellectual Property Commission, so that it could be adapted and used for other content from the creative sector. This software aims to facilitate investigations by identifying, describing and locating copyright illegal content and to verify the violation by downloading, viewing or other means.

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<sup>352</sup> Association For legal content!, <https://www.parlegalusaturu.lv/lv/aktualitates/>.

<sup>353</sup> LaLiga, “El Ministerio de Educación, Cultura y Deporte y LaLiga colaboran en la lucha contra la piratería en Internet”, 13 June 2017, <https://www.laliga.com/noticias/el-ministerio-de-educacion-cultura-y-deporte-y-laliga-colaboran-en-la-lucha-contra-la-pirateria-en-internet>.

LaLiga, “El Ministerio de Educación, Cultura y Deporte y LaLiga colaborarán en el fomento de la lectura y la promoción de los valores del fútbol a través del cine”, 20 March 2018, <https://www.laliga.com/en-GB/news/el-ministerio-de-educacion-cultura-y-deporte-y-laliga-colaboraran-en-el-fomento-de-la-lectura-y-la-promocion-de-los-valores-del-futbol-a-traves-del-cine>.

## 6. Country reports

This section outlines the national legal summaries of each European country, based on the generalised questionnaire distributed.

### 6.1. AT – Austria – National legal summary<sup>354</sup>

#### 6.1.1. General legal framework

##### 6.1.1.1. National legislation on copyright<sup>355</sup>

In Austria, the Copyright Act (*Bundesgesetz über das Urheberrecht an Werken der Literatur und der Kunst und über verwandte Schutzrechte* (Urheberrechtsgesetz –UrhG))<sup>356</sup> is the general act that regulates the scope and the enforcement of copyright and related rights.<sup>357</sup>

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<sup>354</sup> The country report on Austria incorporates the feedback received from Thomas Rainer Schmitt (Supervisory Authority for Collective Management Organisations) during the checking round with the national competent institutions.

<sup>355</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>356</sup> <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001848>.

<sup>357</sup> It is worth noting that the Austrian concept of *Urheberrecht*, as a subjective right, is not fully synonymous with the concept of copyright, but has a narrower scope, describing the non-transferrable relationship of the author to their work. Possible exploitation rights and other norms that are encompassed by the term copyright, as well as questions determining the content, scope, transferability and consequences of infringement of such rights, build on this concept of *Urheberrecht* as a subjective right. However, all of this is considered to be encompassed by the legal scope of *Urheberrecht* which is comparable to the scope of copyright at large.



Other relevant legislation concerning the enforcement of copyright includes:

- The Austrian E-Commerce Act (*Bundesgesetz, mit dem bestimmte rechtliche Aspekte des elektronischen Geschäfts- und Rechtsverkehrs geregelt werden (E-Commerce-Gesetz - ECG)*)<sup>358</sup>
- The Austrian Access Control Act (*Bundesgesetz über den Schutz zugangskontrollierter Dienste (Zugangskontrollgesetz – ZuKG)*)<sup>359</sup>
- The Austrian Exclusive Rights for Broadcasting Act (*Bundesgesetz über die Ausübung exklusiver Fernsehübertragungsrechte (FernsehExklusivrechtgesetz – FERG)*)<sup>360</sup>
- The Austrian Media Act (*Bundesgesetz vom 12. 6. 1981 über die Presse und andere publizistische Medien ( Mediengesetz – MedienG)*)<sup>361</sup>
- The Austrian Audiovisual Media Act (*Bundesgesetz über audiovisuelle Mediendienste (Audiovisuelle Mediendienste-Gesetz – AMD-G)*)<sup>362</sup>
- The Austrian Act on Collective Management Organisations (*Bundesgesetz über Verwertungsgesellschaften (Verwertungsgesellschaftengesetz 2016 – VerwGesG 2016)*).<sup>363</sup>
- The Austrian Anti-Piracy Act (*Bundesgesetz, mit dem ergänzende Regelungen zur Durchsetzung der Rechte geistigen Eigentums durch die Zollbehörden erlassen werden (Produktpirateriegesetz 2020 – PPG 2020)*).<sup>364</sup>

In Austria, copyright infringement is considered mainly as a civil law violation; however, the Copyright Act also provides for a criminal liability and specific procedural remedies for copyright infringements in certain cases which affect the exploitation rights of the copyright owner (§§ 91–93 UrhG).

If the infringement is committed for commercial purposes, repeatedly and for profit, § 91 paragraph 2a UrhG and § 70 of the Austrian Criminal Code provide for a more severe punishment. In cases where criminal liability is applicable, imprisonment and fines can be applied. Under § 91 UrhG and § 19 of the Austrian Criminal Code, the fine is calculated to cover the daily income of up to 360 days (with a daily rate between EUR 4 and EUR 5 000).

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<sup>358</sup> <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001703>.

<sup>359</sup> <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20000792>.

<sup>360</sup> <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001413>.

<sup>361</sup> <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000719>.

<sup>362</sup> <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001412>.

<sup>363</sup> <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009532>.

<sup>364</sup> <https://www.ris.bka.gv.at/NormDokument.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010791&FassungVom=2021-05-13&Artikel=&Paragraf=0&Anlage=&Uebergangsrecht=>.



### 6.1.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

The Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>365</sup> has not been transposed to date (as at August 2021).

**Table 12. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	N/A
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	2006 Austrian Copyright Amendment Act ( <i>Bundesgesetz, mit dem das Urheberrechtsgesetz geändert wird (Urheberrechtsgesetz-Novelle 2006 – UrhG-Nov 2006)</i> )
<b>Information Society (InfoSoc) Directive</b>	2003 Austrian Copyright Amendment Act ( <i>Bundesgesetz, mit dem das Urheberrechtsgesetz geändert wird (Urheberrechtsgesetz-Novelle 2003 - UrhG-Nov 2003)</i> )
<b>E-Commerce Directive</b>	Austrian E-Commerce Act (introduced by the Austrian Act to Regulate E-Commerce) ( <i>Bundesgesetz, mit dem bestimmte rechtliche Aspekte des elektronischen Geschäfts- und Rechtsverkehrs geregelt werden (E-Commerce-Gesetz - ECG)</i> ) on the aspects of electronic commerce and legal transactions in cooperation with other states
<b>Conditional Access Directive</b>	Austrian Access Control Act ( <i>Bundesgesetz über den Schutz zugangskontrollierter Dienste (Zugangskontrollgesetz - ZuKG)</i> ) on the legal protection of service providers, providing television broadcasting, radio broadcasting, or other paid for or access controlled services.

Source: Austrian response to European Audiovisual Observatory standardised survey

## 6.1.2. National rules applicable to audiovisual sports content

### 6.1.2.1. Legal definitions of “broadcaster” and “sports event organiser”

In Austrian law, the definition of the term “broadcaster” (*Fernsehveranstalter*) is provided by § 2, No. 17 of the Austrian Audiovisual Media Act, as follows:

*an entity that creates, compiles and distributes television programmes (analogue or digital) for distribution in cable and other electronic communications networks, by satellite*

<sup>365</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.



*or by wireless terrestrial means or has them distributed in full and unchanged by third parties [... however] a broadcaster is not an entity that exclusively rebroadcasts television programmes.*

There is no legal definition of “sports event” or “sports event organiser” in Austrian law.

#### 6.1.2.2. Legal protection related to sports events

Austrian copyright law contains special provisions concerning organisers of a (sports) event. Namely, according to § 72 UrhG, all event organisers have primary exploitation rights in the respective broadcast of the event. The organiser who has arranged the performance shall have the exclusive right, in addition to the performer, to record the performance on a visual or sound carrier and to make the performance available to the public, to broadcast the performance by radio, unless the broadcast is made by means of a video or audio carrier produced and distributed with his/her consent; and to reproduce the performance in public by means of loudspeakers or any other technical device outside the place where it takes place, unless the reproduction is made by means of a video or sound carrier produced and distributed with his/her consent or by means of an authorised radio broadcast.<sup>366</sup>

Where applicable, the organiser is entitled to take legal action in case of infringement of his/her exploitation rights (e.g. the organiser can claim appropriate remuneration pursuant to § 86 (1) 3).

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<sup>366</sup> *Schutz des Veranstalters – § 72. (1) Der Veranstalter, der die Darbietung angeordnet hat, hat mit den von diesem Bundesgesetz bestimmten Beschränkungen neben dem ausübenden Künstler das ausschließliche Recht, 1. die Darbietung auf einem Bild- oder Schallträger festzuhalten und die Darbietung der Öffentlichkeit zur Verfügung zu stellen, 2. die Darbietung durch Rundfunk zu senden, es sei denn, dass die Sendung mit Hilfe eines Bild- oder Schallträgers vorgenommen wird, der mit seiner Einwilligung hergestellt und verbreitet wurde, und 3. die Darbietung durch Lautsprecher oder durch eine andere technische Einrichtung außerhalb des Ortes (Theater, Saal, Platz, Garten u. dgl.), wo sie stattfindet, öffentlich wiederzugeben, es sei denn, dass die Wiedergabe mit Hilfe eines Bild- oder Schallträgers, der mit seiner Einwilligung hergestellt und verbreitet wurde, oder mit Hilfe einer zulässigen Rundfunksendung vorgenommen wird.*

*(2) Ohne Einwilligung des Veranstalters hergestellte oder verbreitete Bild- oder Schallträger dürfen zu einer Rundfunksendung oder öffentlichen Wiedergabe der Darbietung nicht benutzt werden.*

*(3) Ob gegenüber dem Veranstalter von Darbietungen die Verpflichtung besteht, daran mitzuwirken und eine Verwertung zu gestatten, ist nach den das Rechtsverhältnis der Mitwirkenden zum Veranstalter regelnden Vorschriften und Vereinbarungen zu beurteilen. Hiernach richtet sich auch, ob einem Mitwirkenden ein Anspruch auf ein besonderes Entgelt gegen den Veranstalter zusteht. In jedem Fall hat der Veranstalter, mit dessen Einwilligung eine Darbietung festgehalten werden soll, hievon die Mitwirkenden, auch wenn sie zur Mitwirkung verpflichtet sind, vorher auf angemessene Art in Kenntnis zu setzen.*

*(4) Die Verwertungsrechte der Veranstalter erlöschen fünfzig Jahre nach der Darbietung, wenn aber vor dem Ablauf dieser Frist eine Aufzeichnung der Darbietung veröffentlicht wird, fünfzig Jahre nach der Veröffentlichung. Die Fristen sind nach § 64 zu berechnen.*

*(5) Im Übrigen gelten für die Verwertungsrechte des Veranstalters nach Abs. 1 die für die Verwertungsrechte des ausübenden Künstlers geltenden Bestimmungen entsprechend.*



However, mere sport performances do not usually meet the standard of a protected performance, and therefore sports event organisers will only occasionally benefit from the protection of § 72 UrhG. This might be different in the case of, e.g. figure skating, where choreography is used to convey emotions as well.

Most relevant in relation to sports events is the protection granted to the producers of static or moving pictures (e.g. photographers of football stars) who also benefit from “ancillary” (or related) rights (*Leistungsschutzrechte*) over that content, pursuant to § 74 UrhG. These rights encompass the rights to reproduction, communication to the public, broadcasting, or other dissemination. Furthermore, in the case of broadcasting, the broadcaster holds exclusive rights over the signals, such as the right to record the broadcast or the right to communicate the broadcast to the public (e.g. public viewing), pursuant to § 76a UrhG. These rights are not in conflict with any other special provisions, as outlined below, that may apply in addition to the above.

Beyond this, audiovisual recordings of sports events and live broadcasts of the same can fall under the protective umbrella of copyright law per se. In fact, although sports performances or events are not protected per se by copyright, the audiovisual content of sports performances or events may be considered as works and benefit from copyright protection, if they meet certain minimum standards of idiosyncrasy, such as the use of camera work, video repetitions, etc.<sup>367</sup> In this case, the audiovisual recording itself is protected as an object of copyright, and consequently copyright is assigned to the natural person(s) responsible for it. The copyright holder is granted a set of exploitation rights (*Verwertungsrechte*) that are similar to the related rights mentioned above (e.g. including rights of reproduction, dissemination or broadcast). However, pursuant to the legal presumption of § 38 UrhG, relevant rights of use regarding films are considered to be transferred to the producer in the case of a commercially produced audiovisual medium. These exclusive rights may be licensed to the broadcasters.

### 6.1.2.3. Other specific rules applicable to sports events

No other specific rules are applicable to sports events, as far as the enforcement of copyright and related rights is concerned. No specific rules are provided under Austrian law concerning the use of sports content in social media.

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<sup>367</sup> See the ruling of the Austrian Supreme Court in OGH – 4 Ob 208/15i – 7.1.2016, and 4 Ob 184/13g – 17 December 2013.

**Table 13. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights <sup>368</sup>
<b>Broadcaster</b>	Yes, paragraph 2 No. 17 of the Austrian Audiovisual Media Act	Related rights
<b>Sports event organiser</b>	No	Exploitation rights including broadcasting rights provided that the event shows the interpretation of a work (e.g. figure skating) or the organiser is also the photographer/record producer/broadcaster or has licensed the respective rights

*Source: Austrian response to European Audiovisual Observatory standardised survey*

### 6.1.3. Remedies and sanctions applicable in the event of infringement

#### 6.1.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

Sanctions, remedies and injunctions are granted in case of breach of rights under the Copyright Act. As the InfoSoc Directive and the IPRED 2004/48/EC have been transposed into the Copyright Act, these standard measures also apply to online infringement of audiovisual sports content.

The Copyright Act allows claims for the following: cease and desist and removal (§§ 81 and 82 respectively); publication of an adverse court verdict (§ 85); appropriate remuneration (§ 86); damages and absorption of profit (§ 87) and in connection to this accounting information (§ 87a); and information with respect to potential intermediaries and logistical channels of distribution (§ 87b). All of these claims, with the exception of the last two and the claim for publication of an adverse court verdict, can be secured by means of a preliminary injunction (§ 87c).

Furthermore, when access to sports content distributed as a television broadcast, radio broadcast or via an information society service is protected and subject to payment,

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<sup>368</sup> A definition of the producer of static or moving pictures is provided in paragraph 74(1) of the Austrian Copyright Act. He/she holds exploitation rights including broadcasting rights.



such content falls within the definition of a protected service within the meaning of § 2, No.2 of the Austrian Access Control Act. The civil law sanctions and remedies provided under §§ 5–9 of the Austrian Access Control Act are therefore applicable to such content, as follows: (i) an order to cease and desist the infringing behaviour; (ii) disposal or elimination of unlawful status, e.g. by elimination/destruction of technology used to circumvent access control; (iii) payment of damages and absorption of profits unlawfully gained; (iv) provision of accounting information; (v) a preliminary injunction.

Also, §§ 10–12 of the Austrian Access Control Act provide for additional criminal sanctions and remedies, in particular: (i) imprisonment and fines; (ii) confiscation of technology used to circumvent access control.

In general, all sanctions and remedies outlined above are applicable in principle and could be invoked in cases concerning online piracy of audiovisual sports content.

#### 6.1.3.2. National bodies with competences on copyright enforcement

There is no national authority (e.g. administrative body) other than judicial bodies with competences to address copyright infringement in Austria. Disputes over Austrian copyrights are under the competence of Austrian courts.

#### 6.1.3.3. Codes of conduct and Memorandums of Understanding

No codes of conduct or Memorandums of Understanding have been adopted at national level by public and/or private entities with regard to the enforcement of intellectual property rights and the fight against online piracy.

#### 6.1.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

Pursuant to § 81 of the Copyright Act, the rightsholder may request a cease and desist order by the competent court against the alleged infringer and possible intermediaries. However, if the intermediary is privileged by virtue of §§ 13–18 of the E-Commerce Act (e.g. in cases of caching, hosting, search engines, etc., the Act being generally applicable to access and hosting providers but not to content providers), a warning/notice must be issued first.

#### 6.1.3.5. Removal and blocking orders

Non-copyright specific remedies apply, in accordance with §§ 379 and 381 of the Austrian Injunction and Enforcement Code (*Exekutionsordnung*). In addition, paragraph 87c UrhG



allows for preliminary (or “temporary”) injunctions<sup>369</sup> in copyright matters that can be granted to secure (a) the claim and (b) relevant evidence with respect to said claims.

Injunctions can be granted to achieve a (temporary) cease and desist order, or to secure monetary claims. Requirements for injunctions are eased in the case of infringement for commercial (i.e. repeated, profit-driven) purposes.

Blocking injunctions are covered under standard cease and desist procedures. Dynamic blocking injunctions (in a broad sense) are possible under Austrian law. Austrian courts have recognised the principle of “outcome prohibition” (*Erfolgsverbot*). When applying this principle, the courts oblige the infringing party to achieve a compliant result but do not specify the measure(s) they need to undertake, which can concern content that is merely “similar”.

As regards the relevant procedure to request removal and blocking orders according to § 81 UrhG, the rightsholder may request a cease and desist order by the competent court against the infringer and possible intermediaries, if there are any. Such claims can be supported with a corresponding preliminary blocking injunction pursuant to § 87 UrhG against the internet access provider. The Austrian Supreme Court has found that there is no legal basis for requesting certain specific measures (such as Internet Protocol (IP) blocking), but that the injunction may impose the aforementioned “outcome prohibition” (*Erfolgsverbot*).

Austrian courts have recognised that competing legitimate interests (such as legal access to information on a website that may be blocked) and the realistic ability of the infringing party to correct the infringing state or behaviour must be considered. With respect to the above, no case law has been detected at the time of writing that concerns online piracy of audiovisual sports content, but these principles remain applicable to such matters.

In order to achieve a preliminary (blocking) injunction, the infringed party must submit an appropriate request that outlines (1) a substantiated set of facts that give rise to the claim that is to be secured; (2) the risk to the claimant due to the alleged infringer’s behaviour; (3) the type of injunction sought (e.g. a blocking injunction); and (4) the duration of the injunction sought. Pursuant to § 87c paragraph 3, the risk necessitating the preliminary injunction does not need to be further substantiated. The infringing party can delay the preliminary injunction via an “impugnation filing” (*Impugnationsklage*) claiming it has taken all adequate measures to prevent infringement.<sup>370</sup>

From a procedural point of view, §§ 378 and following of the Austrian Injunction and Enforcement Code (*Exekutionsordnung*) with respect to requests for a cease and desist

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<sup>369</sup> A preliminary injunction is a court order made in the early stages of a lawsuit or petition which prohibits the parties from performing an act which is in dispute, thereby maintaining the status quo until there is a final judgment after trial.

<sup>370</sup> Austrian Supreme Court Case OGH – 4 Ob 71/14s – 24 June 2014.



order applies to such proceedings. In the case of a preliminary injunction ordered before the starting of an ordinary proceedings, the court will also set a deadline for the infringed party to file a respective lawsuit.

#### 6.1.3.6. Measures against end-users

Internet access can be blocked with respect to certain domains by the internet access provider for all of its customers. Publicly available information suggests that suspension or blocking of individual internet access is not done in Austria at this time.

It is also to be noted that the lack of traffic data that is available to the infringed party limits opportunities to pursue potential remedies. In fact, access providers are not allowed to collect or disclose traffic data in case of an information request based on a suspicion of copyright infringement. Indeed, pursuant to paragraph 87b paragraph 3 UrhG, hosting and access providers have to provide information (i.e. name and address) about an infringer in the case of a prima facie substantiated request if possible. However, the provision of the data has to be balanced with the infringer's privacy and data protection rights. In addition, information service providers are under a legal obligation to delete or anonymise identifying information (i.e. traffic data) after a connection has been established to the infringer. As a result, according to the Austrian Supreme Court (OGH - 4 Ob 41/09x - 14.7.2009 and 6 Ob 119/11k - 22.06.2012), Austrian law currently does not allow providers to share said data in the case of suspected copyright infringement.

#### 6.1.3.7. Criminal sanctions

In the case of some types of intentional infringement (i.e. infringement of so-called exploitation rights – *Verwertungsrechte* – of the rightsholder, which also include certain *Leistungsschutzrechte*, such as related rights of record producers and broadcasters), the Copyright Act allows for criminal proceedings and consequently penalties and remedies, pursuant to §§91–93. Notably, individuals are shielded from criminal liability in the case of piracy for their personal use or for the use of someone else on their direction pursuant to § 91 2nd sentence.

The statute of limitations is one year, or five years if the infringements were committed for profit (§ 57 of the Criminal Code).

Infringement for commercial (i.e. repeated, profit-driven) purposes allow a more severe punishment (§ 91 Abs. 2a UrhG and § 70 of the Criminal Code).

In the case of criminal liability both imprisonment and fines can be ordered. Penalties for criminal law violations are dependent on the perpetrator's income. In the case of copyright violations, the fine is calculated to cover the daily income of up to 360 days (with a daily rate between EUR 4 and EUR 5 000) (§ 91 UrhG and § 19 of the Criminal Code).

In some cases, criminal penalties under the Austrian Access Control Act may also apply to online piracy. Similarly, criminal proceedings are only initiated if requested by the copyright holder.

The rightsholder bears a cost risk when instigating criminal proceedings, but court costs may be collected from the infringer in the case of a successful verdict.

Regarding criminal sanctions, §§ 10–12 of the Austrian Access Control Act provide, in particular, for imprisonment and fines, and for the confiscation of the technology used to circumvent access control.

All of the above criminal sanctions must be requested at the competent criminal court by the rightsholder or his/her affiliates who also have to prove the infringer's deeds and guilt. The Public Prosecutor's Office will not be involved in any such proceedings. Therefore, criminal sanctions are rarely preferred over civil litigation.

In specific cases, the infringer's behaviour can, however, also be qualified as an offence such as fraud, which will be investigated and brought before the court by the Public Prosecutor's Office. Rightsholders can also inform the Public Prosecutor's Office of any facts to trigger such proceedings. In the course of such proceedings, rightsholders may also claim damages (§ 69 of the Code of Criminal Procedure).

**Table 14. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No, national copyright law is applied
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial bodies)	No
Entitlement to take legal action	Yes, rightsholders (mainly producers and broadcasters)
Codes of conduct	No
Specific proceedings	No
Specific remedies	No

*Source: Austrian response to European Audiovisual Observatory standardised survey*



**Table 15. National remedies in the case of copyright infringement**

Typology	Description
<b>Criminal prosecution and criminal sanctions</b>	Yes
<b>Differentiation of criminal sanctions based on acting for profit</b>	Yes
<b>Removal and blocking injunctions</b>	Yes
<b>Dynamic and/or live blocking injunctions</b>	Yes
<b>De-indexing injunctions</b>	N/A
<b>Damages and orders to cease and desist</b>	Yes
<b>Administrative offence and remedies</b>	No
<b>Notice and take-down procedures</b>	Yes

Source: Austrian response to European Audiovisual Observatory standardised survey

#### 6.1.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions in relation to online infringement of audiovisual sports content.

**Table 16. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
<b>Communication to the public</b>	<p>Unlicensed communication to the public via public viewing in a betting office of the live broadcast of a sports event is a copyright infringement.</p> <p>An online file-sharing platform can meet the criteria of communication to the public and may therefore be considered as a copyright infringement.</p>	<p>OGH – 4 Ob 208/15i – 27.01.2016</p> <p>OGH – 4 Ob 184/13g – 17.12.2013</p> <p>OGH – 4 Ob 121/17y – 24.10.2017</p>
<b>Hosting providers' knowledge and awareness of illegal activity</b>	<p>To have knowledge, it is sufficient to have the possibility to detect an activity as illegal.</p> <p>It is not mandatory for hosting providers to review the content unless there is a</p>	<p>OGH – 3 Ob 1/18w – 24.1.2018</p> <p>OGH – 4 Ob 71/14s – 24.6.2014</p> <p>OGH – 4 Ob 121/17y – 24.10.2017</p> <p>OGH – 4 Ob 41/09x – 14.7.2009</p>



Content	Substance of the decision	Decisions
	notification/request.	
<b>Notice and take-downs</b>	A notification ( <i>Abmahnung</i> ) must outline concisely the facts underlying the copyright (infringed rights, ownership, facts of the case) and the type of copyright infringement; this is true only when the recipient is able to identify the relevant infringement without any more research.	OGH – 4 Ob 140/14p – 21.10.2014
<b>Measures against end-users</b>	Internet access can be blocked with respect to certain domains.	OGH – 4 Ob 71/14s – 24.06.2014 OGH – 6 Ob 195/19y – 15.09.2020
<b>Criminal sanctions</b>	N/A	N/A

Source: Austrian response to European Audiovisual Observatory standardised survey

#### 6.1.4.1. Communication to the public

Several important national court decisions examined the nature of copyright protection attached to sports content, in particular in relation to the right of communication to the public. For example, the Austrian Supreme Court found, in a ruling of 17 December 2013, that live broadcasting of sport events can be protected under copyright law as a work of cinematographic art within the meaning of §4 UrhG (if the camera work, picture direction including repetitions, insertion of graphics and other design elements, and, where applicable, the commentary as well, allow individual attribution to the corresponding creator) and that its unlicensed communication to the public via public viewing in a betting office constitutes copyright infringement.<sup>371</sup> In addition, the court found, in a decision of 24 October 2017, that the operation of a torrent platform for online file sharing classes as “communication to the public”.<sup>372</sup>

<sup>371</sup> OGH – 4 Ob 184/13g – 17.12.2013, [https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_20131217\\_OGH0002\\_00400B00184\\_13G0000\\_000](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20131217_OGH0002_00400B00184_13G0000_000); see also, OGH – 4 Ob 208/15i – 27.01.2016, [https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_20160127\\_OGH0002\\_00400B00208\\_15I0000\\_000](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20160127_OGH0002_00400B00208_15I0000_000).

<sup>372</sup> OGH – 4 Ob 121/17y – 24.10.2017, [https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_20171024\\_OGH0002\\_00400B00121\\_17Y0000\\_000](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20171024_OGH0002_00400B00121_17Y0000_000).



#### 6.1.4.2. Online infringement of audiovisual sports content

There is no jurisprudence of the Austrian Supreme Court on online piracy of audiovisual sports content per se. However, the most important decisions of the Austrian Supreme Court in cases relating to online piracy in general, are as follows:

- The court allowed a blocking injunction against an internet access provider, in which the internet access provider unsuccessfully claimed that the imposition of IP blocking measures by a lower court were an unreasonable burden and a general Domain Name System (DNS) blocking measure was adequate to block end-users from accessing certain websites.<sup>373</sup>
- The court found that an internet access provider can be obliged to ensure that an “infringing outcome” or act (e.g. end-user access to illegal content) does not materialise (Erfolgsverbot), with the internet access provider itself being able to choose the appropriate means to achieve this result (e.g. through DNS and IP blocking measures).<sup>374</sup>
- The court also found that websites that have a “structurally infringing” character may be subject to a complete blocking injunction and operation of a torrent platform for online file sharing classifies as “communication to the public”. In the case in question, the court considered that the website had a “structurally infringing character” as it was facilitating the “massive exchange of illegal reproductions of music files” via indexed BitTorrent-files on the website in question and because the name of the platform hinted at illegal activity (“thepiratebay”).<sup>375</sup>
- Another case relating to the practicability of enforcement saw the Austrian Supreme Court decide that rights holders cannot successfully request information relating to the identity of a potential infringer from an access provider, as the access provider must delete identifying “traffic data”.<sup>376</sup>

#### 6.1.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal

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<sup>373</sup> OGH – 3 Ob 1/18w – 24.1.2018,  
[https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT\\_20180124\\_OGH0002\\_00300\\_B00001\\_18W0000\\_000](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20180124_OGH0002_00300_B00001_18W0000_000).

<sup>374</sup> OGH – 4 Ob 71/14s – 24.6.2014,  
[https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT\\_20140624\\_OGH0002\\_00400\\_B00071\\_14S0000\\_000](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20140624_OGH0002_00400_B00071_14S0000_000).

<sup>375</sup> OGH – 4 Ob 121/17y – 24.10.2017,  
[https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT\\_20171024\\_OGH0002\\_00400\\_B00121\\_17Y0000\\_000](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20171024_OGH0002_00400_B00121_17Y0000_000).

<sup>376</sup> OGH – 4 Ob 41/09x – 14.7.2009,  
[https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT\\_20090714\\_OGH0002\\_00400\\_B00041\\_09X0000\\_000](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20090714_OGH0002_00400_B00041_09X0000_000).

activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

The level of information that is necessary pursuant to § 16 of the Austrian E-Commerce Act, which codified Article 14 of the E-Commerce Directive, is actual knowledge (with reference to § 5 paragraph 3 of the Austrian Criminal Code).

Knowledge must include not only the activity itself but also the illegality of said activity. The legislative materials<sup>377</sup> suggest that this is the case if the illegality is plainly obvious even to a non-professional.

The Austrian Supreme Court has clarified the concepts of knowledge and awareness. The court stated that it does not have to be obvious to a person – who does not have legal knowledge – that an illegal activity is occurring by him/herself, but it is necessary for the person to be able to detect the possibility of the activity being illegal after receiving a notice (*Glaubhaftmachung*).<sup>378</sup>

The legislative materials demand a narrow interpretation of the concept of actual knowledge; “ought to know” is not sufficient to disable the liability shield of § 16 of the Austrian E-Commerce Act.

In light of the Austrian Supreme Court decisions, hosting providers are not obliged to proactively review the contributions of users/customers unless they have received a notice from a potentially infringed party, in line with § 18 of the E-commerce Act and the prohibition of general monitoring as provided in Article 15 of the E-Commerce Directive.<sup>379</sup> However, a heightened standard of control obligation applies if previous infringements have been notified already.<sup>380</sup>

#### 6.1.4.4. Notice and take-down requirements

A notice needs to make an infringement plausible (*Glaubhaftmachung*), i.e. substantiating the claim to the extent that an infringement is at least probable in the eyes of the court,<sup>381</sup> but does not have any formal requirements under Austrian law.

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<sup>377</sup> Legislative materials are supporting documentation accompanying legislation drafts. They are often used for interpretative purposes as they contain further details and indicate the legislator’s intent.

<sup>378</sup> OGH – 6 Ob 244/16z – 22.12.2016,  
[https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT\\_20161222\\_OGH0002\\_00600B00244\\_16Z0000\\_000](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20161222_OGH0002_00600B00244_16Z0000_000).

<sup>379</sup> OGH – 6 Ob 178/04a – 21.12.2006,  
[https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT\\_20061221\\_OGH0002\\_00600B00178\\_04A0000\\_000](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20061221_OGH0002_00600B00178_04A0000_000).

<sup>380</sup> OGH – 6 Ob 178/04a – 21.12.2006,  
[https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT\\_20061221\\_OGH0002\\_00600B00178\\_04A0000\\_000](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20061221_OGH0002_00600B00178_04A0000_000) and Zankl, paragraph 16 ECG in E-Commerce Gesetz (Commentary), 2nd ed.

<sup>381</sup> See, e.g. 4 Ob 22/15m – 19.5.2015,



The jurisprudence of the Austrian Supreme Court has not investigated formalities requirements under § 16 of the Austrian E-Commerce Act, which codified Article 14 of the E-Commerce Directive, in particular with respect to audiovisual sports content.

With respect to the corresponding § 81 UrhG that regulates the cease and desist procedure, the Austrian Supreme Court found that a notification (*Abmahnung*) must outline concisely the facts underlying the copyright and the type of copyright infringement.<sup>382</sup> In a case, concerning the unlicensed printing of sports photographs, the court found that a notification is given only if the addressee is able to understand the infringement without any further research. In the case in question, the copyright holder submitted fee-notes/invoices to a newspaper for the photographs which were printed without his/her authorisation. The court found that the mere submission of these invoices without context or any additional information did not classify as a notification.

#### 6.1.4.5. Removal and blocking orders

Due to the wide range of possible blocking orders (i.e. *Erfolgsverbot*), and the fact that illegal content is usually not hosted by hosting providers within reach of the Austrian legal system, blocking orders are usually addressed to internet access providers (in cases where the website in question is mainly used for copyright infringement) or to the respective hosting provider (in cases where the specific infringing material is embedded in an otherwise legitimate website). No quantitative data with respect to the *ratio* of such orders is publicly available.

#### 6.1.4.6. Measures against end-users ordered by the courts

Measures against end-users are limited under Austrian law. Currently, internet access providers are not allowed to collect or share traffic data in the event of an information request based on a suspicion of copyright infringement. Information network providers are under the legal obligation to delete or anonymise identifying information (i.e. traffic data) after a connection has been established. As a result, according to case law, Austrian law currently does not allow providers to give up said data in the case of suspected copyright infringement.<sup>383</sup> Given this restrictive regime, and in lieu of measures against

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[https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT\\_20150519\\_OGH0002\\_00400B00022\\_15M0000\\_000](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20150519_OGH0002_00400B00022_15M0000_000).

<sup>382</sup> OGH – 4 Ob 140/14p – 21.10.2014,

[https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT\\_20141021\\_OGH0002\\_00400B00140\\_14P0000\\_000](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20141021_OGH0002_00400B00140_14P0000_000).

<sup>383</sup> OGH – 4 Ob 41/09x – 14.7.2009,

[https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT\\_20090714\\_OGH0002\\_00400B00041\\_09X0000\\_000](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20090714_OGH0002_00400B00041_09X0000_000).



end-users, the rightsholders are more likely to ask for removal and blocking orders instead.<sup>384</sup>

In any case, internet access can be blocked with respect to certain domains by the access provider for all of its customers. Publicly available information suggests that the suspension or blocking of individual internet access is not done in Austria at this time.

#### 6.1.4.7. Compensation criteria adopted by the courts

Regarding compensation criteria applied by the courts, under the Copyright Act, claims for lost profits (§ 87 paragraph 1) and “appropriate compensation” for non-monetary damages (§ 87 paragraph 2) are provided. In lieu of lost profits, the infringed party can also claim a fee of twice the market rate for the object of infringement (§ 87 paragraph 3). Alternatively, the infringed party can claim the infringer’s profit in certain cases (§ 87 paragraph 4). Claims for lost profits and return of the infringer’s profit will usually exclude each other, except in the case of damages that exceed the realised profit of the infringer.

Also, similar remedies apply for claims under the Austrian Access Control Act (§ 7).

#### 6.1.4.8. Criminal sanctions ordered by the courts

In Austria, criminal sanctions are rare due to a liability shield that applies to many cases of infringement for personal use in § 91 UrhG. The Austrian Supreme Court has not applied criminal sanctions to online piracy of audiovisual sports content specifically. Relevant proceedings in lower courts may have occurred.

### 6.1.5. Reports and studies

In Austria, no studies or reports about online piracy of protected content have been identified. Furthermore, reports that deal specifically with illegal online transmission of sports could not be identified nor any other studies reporting on technologies and business models used for the illegal streaming of sports content or describing the legal offer of online sports content.

Instead, campaigns with respect to general online piracy, not limited to sports piracy, have been organised. Such campaigns led to the insertion of short informational films or advertorials that were shown in movie theatres or inserted on data drives such as movie DVDs in the last 20 years. Currently, the most active entity in this area is the Association against Piracy in the Movie and Video Industry (*Verein für Anti-Piraterie der*



*Film- und Videobranche*) and its body dedicated to the enforcement of copyright against online piracy.<sup>385</sup>

Some associations of broadcasters and rightsholders actively work to address the issue of online piracy of audiovisual sports content. Multiple collective management organisations (*Verwertungsgesellschaften bzw. -einrichtungen*) with different levels of rightsholder involvement are active with respect to audiovisual content, in particular the following:

- VGR – Verwertungsgesellschaft Rundfunk GmbH
- VdFS – Verwertungsgesellschaft der Filmschaffenden reg. Genossenschaft mit beschränkter Haftung
- VAM – Verwertungsgesellschaft Für Audiovisuelle Medien GmbH
- RAW – Einrichtung zur Geltendmachung der Rechte der öffentlichen Aufführung/Wiedergabe von Audiovisuellen Medien GmbH
- LSG – Wahrnehmung von Leistungsschutzrechten Ges.m.b.H.

## 6.1.6. Data compilation

This country report is based on data compiled by Maximilian Gartner, researcher at the Alma Mater Research Center for Human-Centered Artificial Intelligence at the University of Bologna and alumnus of the Austrian law firms Binder Grösswang, Fellner Wratzfeld & Partner and Alix Frank Attorneys at Law.

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<sup>385</sup> A non-Austria specific report is the one by the European Commission on "Estimating displacement rates of copyrighted content in the EU", <https://op.europa.eu/en/publication-detail/-/publication/59ea4ec1-a19b-11e7-b92d-01aa75ed71a1>. For further information, see also <https://www.wko.at/branchen/gewerbe-handwerk/film-musikwirtschaft/aktivitaeten.html> (source in German).



## 6.1.7. Annex

**Table 17. Overview of relevant transposition measures**

EU directives	National law <sup>386</sup>
<b>Conditional Access Directive 98/84/EC</b>	Access Control Act ( <i>Bundesgesetz über den Schutz zugangskontrollierter Dienste (Zugangskontrollgesetz – ZuKG)</i> )
<b>InfoSoc Directive 2001/29/EC</b>	Copyright Amendment Act ( <i>Bundesgesetz, mit dem das Urheberrechtsgesetz geändert wird (Urheberrechtsgesetz-Novelle 2003 - UrhG-Nov 2003)</i> )
<b>Article 6 InfoSoc – Obligations as to technological measures</b>	§ 90c UrhG
<b>Article 8 InfoSoc – Sanctions and remedies</b>	§§ 81 paragraph 1a, 82 paragraph 1 and 2, 87a paragraph 1, 87b UrhG
<b>IPRED 2004/48/EC</b>	Copyright Amendment Act ( <i>Bundesgesetz, mit dem das Urheberrechtsgesetz geändert wird (Urheberrechtsgesetz-Novelle 2006 – UrhG-Nov 2006)</i> )
<b>Article 6 IPRED – Evidence</b>	§§ 303–307 Code of Civil Procedure ( <i>Zivilprozessordnung</i> )
<b>Article 7 IPRED – Measures for preserving evidence</b>	§ 87c UrhG
<b>Article 8 IPRED – Right of information</b>	§§ 325, 326, 333, 337ff, 384ff Code of Civil Procedure; §87b paragraph 2 UrhG
<b>Article 9 IPRED – Provisional and precautionary measures</b>	§ 87c UrhG
<b>Article 10 IPRED – Corrective measures</b>	§ 82 UrhG
<b>Article 11 IPRED – Injunctions</b>	§ 81 UrhG
<b>Article 13 IPRED – Damages</b>	§ 87 UrhG
<b>Article 14 IPRED – Legal costs</b>	§ 41 Code of Civil Procedure
<b>Article 15 IPRED – Publication of judicial decisions</b>	§ 85 UrhG

<sup>386</sup> The national law mentioned in this column can be accessed at <https://www.ris.bka.gv.at/>, the Legal Information System of the Republic of Austria. Some acts are also available in English; for an alphabetical list, check <https://www.ris.bka.gv.at/RisInfo/LawList.pdf>.



EU directives	National law <sup>386</sup>
<b>E-Commerce Directive 2000/31/EC</b>	Act to Regulate E-Commerce and to amend the Signature Act and the Civil Code of Procedure ( <i>Bundesgesetz, mit dem bestimmte rechtliche Aspekte des elektronischen Geschäfts- und Rechtsverkehrs geregelt (E-Commerce-Gesetz – ECG) und das Signaturgesetz sowie die Zivilprozessordnung geändert werden</i> ); E-Commerce Act ( <i>Bundesgesetz, mit dem bestimmte rechtliche Aspekte des elektronischen Geschäfts- und Rechtsverkehrs geregelt werden (E-Commerce-Gesetz - ECG)</i> )
<b>Articles 12 – 15 E-Commerce Directive</b>	§§ 13 – 19 E-Commerce Act
<b>Article 17 Abs. 1 E-Commerce Directive</b>	§§ 577 paragraph 3 and 592 paragraph 1 Code of Civil Procedure
<b>Article 20 E-Commerce Directive</b>	§§ 26 and 27 E-Commerce Act
<b>DSM Directive EU 2019/790</b>	Not transposed into Austrian law as at August 2021

## 6.2. BE – Belgium – National legal summary<sup>387</sup>

### 6.2.1. General legal framework

#### 6.2.1.1. National legislation on copyright<sup>388</sup>

Since 1 January 2015, Belgian copyright law has been incorporated into Book XI of the Code of Economic Law (ELC). Copyright is mainly governed by Title 5 “Copyright and Neighbouring Rights” of Book XI.<sup>389</sup>

Other books of the ELC are also relevant to copyright: Book 1, Title 2, Chapter 9 (definitions); Book XV (criminal sanctions and provisions relating to administrative enforcement); and Book XVII (court proceedings).<sup>390</sup>

In Belgium, copyright infringement can be considered both as a civil law violation and a criminal offence. Under civil law, any violation of the author’s economic rights, including the right of reproduction, of distribution and of communication to the public (Article XI.165 (1) ELC) and/or the author’s moral rights (Article XI.165(2) ELC), is considered a civil law violation. From a criminal law perspective, if a civil law violation (i.e. the “material aspect”) is carried out with malicious or fraudulent intent, it is considered a criminal offence under Article XI.293(1) ELC. For this purpose, “fraud” is defined as “the intention to procure for oneself or for others an undue advantage, even of a non-financial and indirect nature”. On the other hand, “malice” is defined as “the intention to harm the interests, material or otherwise, of the rightsholder”.<sup>391</sup>

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<sup>387</sup> The country report on Belgium incorporates the feedback received from Benoît Kosłowski (Ministry of Economy) during the checking round with the national competent institutions.

<sup>388</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>389</sup> Book XI of the ELC was adopted by the laws of 10 and 19 April 2014 whose provisions came into effect on January 1, 2015, Official Journal, 12 June 2014:

[http://www.ejustice.just.fgov.be/cgi\\_loi/loi\\_a1.pl?language=nl&cn=2013022819&caller=list&fromtab=wet#LNK0404](http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=nl&cn=2013022819&caller=list&fromtab=wet#LNK0404).

<sup>390</sup> Belgium is also a member of several international conventions on enforcement of copyright, namely: the Universal Convention of Geneva of 6 September 1952; the Rome Convention of 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations; the Berne Convention of 24 July 1971; the WIPO Copyright Treaty of 20 December 1996; the WIPO Performances and Phonograms Treaty of Geneva of 20 December 1996; the TRIPS Agreement.

<sup>391</sup> The definitions of fraud and malice are provided by the preparatory works of Parliament, 51-2852/001, p. 36 (<https://www.dekamer.be/FLWB/PDF/51/2852/51K2852001.pdf>).



Belgian law does not differentiate crimes on the basis of acting for profit. If, for instance, a copyright infringement is carried out with the intention to harm the rightsholder's (moral) interest, though without acting for profit, such a criminal offence is punishable by the same "level 6" penalty as fraudulent intent (Article XI.293 ELC, Article XV.104 ELC and Article XV.70 ELC). In practice, the pursuit of a for-profit motive on the part of the infringer will help to obtain criminal sanctions. Furthermore, no administrative fines are applicable in the aforementioned cases.

#### 6.2.1.2. Transposition of EU directives

This section aims at highlighting the transposition of EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>392</sup> has not been transposed in Belgium (as at October 2021). In this regard, the Intellectual Property Council (*Conseil de la propriété intellectuelle*) issued an Opinion on the transposition of the Directive on 19 June 2020.<sup>393</sup> A preliminary draft law transposing the DSM Directive was notified to the European Commission on 21 June 2021. The draft contains a section relating to the fight against infringement of copyright, related rights and *sui generis* database rights on the internet (provisions 81 to 86). A new judicial procedure is being created. In this context, a "Service to combat online infringements of copyright and neighbouring rights" has also been set up, which may further implement the decision of the court if the service is authorised. The court's decision can be directed not only against the primary counterfeiter, but also against intermediaries, such as ISPs. They may be required to block access to the infringing acts.<sup>394</sup>

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<sup>392</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

<sup>393</sup> <https://economie.fgov.be/sites/default/files/Files/Intellectual-property/Avis%20Conseils%20Propri%C3%A9t%C3%A9%20intellectuelle/Avis-CPI-19062020.pdf>.

<sup>394</sup> For further details on the draft law, please see at: <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2021&num=360&mLang=en&CFID=1584535&CFTOKEN=2904e4694d391aaf-D253C241-9989-33B4-8EF5D5C01503DACD>.

**Table 18. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	N/A
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	Act of 9 May 2007 on the civil aspects of the protection of intellectual property law – replaced by the Code of Economic Law (ELC) Act of 10 May 2007 on the judicial law aspects of the protection of intellectual property law
<b>Information Society (InfoSoc) Directive</b>	Act of 22 May 2005 – replaced by the ELC
<b>E-Commerce Directive</b>	Act of 11 March 2003 on certain legal aspects of information society services – replaced by different books of the ELC
<b>Conditional Access Directive</b>	Act of 12 May 2003 on the legal protection of information society services  At federal level: the ELC which deals with intellectual property (Book XI); the law of 5 May 2017 on Audiovisual Media Services in the Bilingual Region of Brussels Capital  For the Flemish community: Decree of 27 March 2009 regarding radio broadcasting and television (the Decree)

Source: Belgian response to European Audiovisual Observatory standardised survey

## 6.2.2. National rules applicable to audiovisual sports content

### 6.2.2.1. Legal definitions of “broadcaster” and “sports event organiser”

At federal level, the notion of “broadcaster” is not defined in Belgian legislation regarding “neighbouring” (or related) rights, but the definition of a broadcast, as provided by the 1961 Rome Convention for the protection of performers, producers of phonograms and broadcasting organizations (Article 3(f)), is applicable.

At the community level, the Flemish Community Decree of 27 March 2009 defines a “broadcaster” (*omroeporganisatie*) as the natural or legal person who assumes editorial responsibility for the choice of content of the broadcasting service and who determines how the service is organised (Article 2, 27°). The Decree also defines a “broadcasting service” as: (i) a service as referred to in Articles 56 and 57 of the Treaty on the Functioning of the European Union (TFEU), for which the provider of the service has editorial responsibility, with the principal aim of providing the general public with audiovisual or auditory programmes for purposes of information, leisure, education or cultural enjoyment, by means of electronic communications networks; and/or (ii) commercial communication (Article 2, 26°).



The Decree of the French Community of 26 March 2009 defines a “service distributor” as any legal entity that makes one or more audiovisual media services available to the public in any manner whatsoever and in particular by terrestrial broadcast, satellite or cable distribution networks. The offer of services may include services published by the person himself/herself and services published by third parties with which he/she establishes a contractual relationship (Article 1, 15°). The decree also contains a definition of an audiovisual media service and of a linear service (broadcasters), transposing the Audiovisual Media Services (AVMS) Directive. Thus, an audiovisual media service is defined as a service under the editorial responsibility of a service publisher, the principal purpose of which is the communication to the public of television or radio programmes by electronic communications networks, with the aim of informing, entertaining and educating or with the aim of providing commercial communication (Article 1, 48°). In addition, a linear service provider (broadcaster) is defined as an audiovisual media service provider whose programmes are intended to be received simultaneously by all or part of the public at a time decided by the publisher of the audiovisual media service on the basis of a programme schedule drawn up by the publisher (Article 1, 49°).

The term “sports events organiser” is not defined in the Code of Economic Law (ELC) or in various community decrees relating to media law. However, the notion of event “organiser” is defined in the Flemish Community Decree of 27 March 2009, as “a) the person or association that organises an event or b) the holder of the exploitation rights of the event” (Article 2, 29°). In addition, a definition is provided by Article 2, 26° of the Ordinance of the Brussels-Capital Region of 21 June 2012 relating to the promotion of health in the practice of sport, the prohibition of doping and its prevention, which states that

*an organiser of a sports event designates “any person, natural or legal, who organises a competition or a sports event alone or in association with other organisers, whether free of charge or in return for payment”.*<sup>395</sup>

#### 6.2.2.2. Legal protection related to sports events

Under Belgian law, there is no specific legislation which protects sports event organisers against online piracy of audiovisual sports content. In accordance with the Court of Justice of the European Union (CJEU) judgment in *Football Association Premier League*,<sup>396</sup> Belgian law does not recognise sports events as works benefitting from copyright protection. Although in the same judgment the court offered member states the possibility of granting some type of protection to sports events with a “unique and original character” and the possibility of adopting legislation to protect sports events, Belgium has not adopted specific protection measures for such events.

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<sup>395</sup> Official Journal, 5 July 2012.

<sup>396</sup> Court of Justice of the European Union (CJEU), 4 October 2011, *Football Association Premier League Ltd v. Others*, C-429/08.



However, recordings of sports events can be protected. Although the sports event does not in itself qualify as work of authorship, this is usually not the case for the audiovisual recording of such event, which can fairly easily achieve the (modest) levels of originality required to qualify for copyright protection.<sup>397</sup> The resulting audiovisual product could therefore be considered an original creation and the author is granted a wide variety of exclusive rights in it (Article XI.165 ELC).

Moreover, pursuant to Article XI.209 ELC, the producer holds related rights in the first fixation of the film. Thus, the producer has the exclusive right to authorise or prohibit the direct or indirect, temporary or permanent, reproduction by any means and in any form, in whole or in part, of the film, including the rental right and lending right, as well as the exclusive distribution right. Furthermore, the producer is granted the exclusive right to authorise or prohibit the communication to the public of the film by any process, including by making it available in such a way that members of the public may access it from a place and at a time individually chosen by them (Article XI.209(1)(4) ELC).

If the recording of the sports event is broadcast, such broadcast can be protected by the related rights of the broadcaster under Article XI.215 ELC. Pursuant to this article, broadcasters are granted the following exclusive rights:

- to broadcast directly or rebroadcast their broadcasts, including by cable retransmission<sup>398</sup> and communication to the public by satellite;
- to reproduce their broadcasts by any process, direct or indirect, temporary or permanent, in whole or in part, including distribution of fixations of their broadcasts;
- to communicate their broadcasts to the public if such communication is made in places accessible to the public against payment of an entrance fee;
- to make available to the public the fixations of their broadcasts in such a way that members of the public may access them from a place and at a time individually chosen by them.

Similar exceptions to those for copyright are applicable to the broadcasters' related rights, which are provided in Articles XI.217 and XI.218 ELC.

In the event that sports event organisers are not themselves the producers of the first fixation of the film, neither authors or broadcasters, they can still be protected under general contract law. Organisers can indeed control the physical access to their events (in a stadium, etc.), as well as who is entitled to record and broadcast the event.

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<sup>397</sup> The audiovisual recording of a sports event commonly features a large number of cameras aiming to capture not only the most important aspects of the event, but also the smallest details. In some cases, cameras can be located on helicopters, drones, or, as in the case of Formula 1, on competing cars. Added content, such as 3D animations indicating whether a football player is offside, can also be blended with the recording.

<sup>398</sup> Retransmission will also be covered with the transposition of Directive (EU) 2019/789.



The rights to broadcast sports events are often sold collectively and on the basis of territorial exclusivity.<sup>399</sup> For example, in professional football, each football club does not sell the broadcasting rights to their matches individually but transfers those rights to a mutual organisation – such as the Pro League – which will then sell the broadcasting rights of all the football clubs to one or more television broadcasting organisations, mostly on an exclusive basis.<sup>400</sup>

Concerning the question of who holds the rights to the audiovisual recording and to the broadcast of sports events, there are no specific rules. As mentioned above, there is no specific framework for the exploitation of audiovisual sports rights. However, a trend shows that in professional team sports, national audiovisual rights are generally held by the relevant league. In contrast, in individual competitions, the event organisers are usually the ones who exploit the audiovisual rights.<sup>401</sup>

In the case of sports events, the broadcasting organisations can be the club or a federation and alternately it can be an entity that operates as a professional broadcaster and has acquired the exclusive right to broadcast the sports event.

Provided that the sports content is protected by producers' rights, copyright and/or broadcasters' rights, not only the holders of such rights, but any interested party is entitled to take legal action, based on Article XVII.14(3) ELC and Article XVII.19 ELC. This may include the sports events organisers and sports league organisers. In fact, even if sports event organisers are not the broadcaster or the producer, they can still be considered as an interested party (for injunctions relief at least).<sup>402</sup>

### 6.2.2.3. Other specific rules applicable to sports events

Under Belgian law, there is no other specific legislation which protects sports event organisers against online piracy of audiovisual sports content.

Belgian law does not provide any specific rules about the use of sports events in social media. However, a decision of the Belgian Supreme Court of 24 June 2015<sup>403</sup> contains interesting elements regarding the publication of protected content on social media. In its decision, the court ruled that sharing a protected work on Facebook can constitute a communication to the public. The defendant had posted a message on his Facebook profile in which he called the public not to buy a certain book, but to download it for free on a website – whose hyperlink was mentioned in the post. First, the court ruled that the actions of the defendant were not limited to a private communication to a

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<sup>399</sup> Maeschalk J, Vermeersch A, and De Saedeleer K, "Sport en media", in Maeschalk J, Vermeersch A, and De Saedeleer K, *Sportrecht*, Brugge, eds. Die Keure, 2019, pp. 315-331.

<sup>400</sup> Demeulemeester S., op. cit., p. 21.

<sup>401</sup> Ibid, p. 4.

<sup>402</sup> Pursuant to Article XCII.19(2) ELC, an interested party is entitled to start cease and desist proceedings against an infringer of (a third party's) copyright or related rights.

<sup>403</sup> Court of Cassation, 24 June 2015, *AM* 2015, pp. 277-278.

small circle of intimate relations and that he should have been aware that his message would reach a wider audience than his family or Facebook “friends”. In addition, the Court ruled that posting a link that allows the downloading of a copyright protected work constitutes a communication to the public that should be authorised by the rightsholder, unless that work is freely accessible on another website. Finally, according to the court, posting protected content on a social networks or hyperlinking to content that is freely available elsewhere but posted without the consent of the rightsholder can constitute communication to the public.<sup>404</sup>

**Table 19. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
Broadcaster	Yes	Related rights
Sports event organiser	No	Rights as defined by contract law – access to the events (entitlement to take legal action)

Source: Belgian response to European Audiovisual Observatory standardised survey

## 6.2.3. Remedies and sanctions applicable in the event of infringement

### 6.2.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

The enforcement measures, procedures and remedies applicable to copyright infringement, as provided in Directive 2004/48/EC on the enforcement of intellectual property rights (IPRED), are provided by the Act of 9 May 2007 on the civil aspects of the protection of intellectual property law and the Act of 10 May 2007 on the judicial law aspects of the protection of intellectual property law. After the introduction of the ELC in 2014, Belgian intellectual property (IP) legislation was codified in Book XI of the ELC. Procedural aspects of IP enforcement are now mainly included in Book XVII of the ELC and the Belgian Judicial Code.

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<sup>404</sup> Fierens A, and Schoefs R, “Klassieke en nieuwe vormen van mededeling aan het publiek”, IDRI 2015/4, p. 351.



All sanctions, remedies and injunctions applicable to breaches of the rights set out in the InfoSoc Directive may be invoked in cases of online piracy of audiovisual sports content – provided such content is protected by copyright or subject to protection under related rights belonging to producers or broadcasters. For example, rightsholders are entitled to seek injunctive relief, request a preliminary injunction, initiate descriptive seizure proceedings (measures for preserving evidence), request a blocking injunction against intermediaries (e.g. internet service providers), and seek damages and corrective measures (recall from the channels of commerce, definitive removal from the channels of commerce, destruction of the goods).

Concerning the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive), Article XI.291 ELC defines as criminal offences: (i) the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he/she is pursuing that objective; (ii) the manufacture, importation, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which: (1) are promoted, advertised or marketed for the purpose of circumvention of, or (2) have only a limited commercially significant purpose or use other than to circumvent, or (3) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures (Article XI.291(1) (2) ELC); also, in the case of removal or alteration of any electronic rights management information and the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other protected subject-matter from which electronic rights management information has been removed or altered without authority, if such a person knows, or has reasonable grounds to know, that by so doing he/she is inducing, enabling, facilitating or concealing an infringement of any copyright protected work (Article XI.292(1) ELC). These criminal offences are punishable with a “level 6” penalty (Article XV.104 ELC).

Moreover, rightsholders can seek injunctive relief against infringers of Article XI.291 ELC, based on Article XVII.14(3) ELC. Such an injunction can also be targeted at intermediaries (Article XI.334(2) ELC). Additional sanctions such as confiscation (Article XV.130 ELC), posting of judgments (Article XV.131 ELC) or closure of the establishment of the infringer (Article XV.131/1 ELC) may also apply. Article XV.72 ELC provides that in the event of a repeat offence within five years from the date of a final judgment for the same offence, the maximum fines and prison sentences are doubled. As infringements of Article XI.291 ELC are also civil faults, rightsholders may seek damages based on Article 1382 of the (old) Civil Code.

Furthermore, regarding the legal protection of conditional access services, it is worth mentioning that a difference has to be made between broadcasts (governed by the laws of the Communities) and information society services providers (governed by federal law). In cases concerning online piracy of audiovisual sports content, both providers of

information society services and broadcasters can invoke legal measures and remedies, provided that illicit devices are concerned, including an injunctive relief remedy against the infringing activities<sup>405</sup> and even against commercial communication aimed at promoting illicit devices if such communication has not yet been made public but its publication is imminent. In such a case, the provider of information society services or broadcaster may also seek damages based on Article 1382 of the Civil Code and file a criminal complaint.<sup>406</sup>

### 6.2.3.2. National bodies with competences on copyright enforcement

In Belgium, there is no national body with specific competences on infringements of copyright other than judicial courts that have the power to impose remedies in case of piracy or infringement of copyright or related rights.

A specific service to combat online infringements of copyright and related rights will be set up in the context of the transposition of the DSM Directive. As mentioned above (1.1.1.2.), the service will be able to further implement a court's decision under the control of the judge.

### 6.2.3.3. Codes of conduct and Memorandums of Understanding

There is no code of conduct or Memorandum of Understanding relating to the enforcement of intellectual property rights and the fight against online piracy adopted either by public and/or private entities.

### 6.2.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

Belgian law does not expressly provide for notice and take-down procedures. Service providers are therefore free to organise such procedures as they see fit, as long as they stay within the boundaries of the liability exemption regime provided in Chapter 6 of Book XII ELC.

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<sup>405</sup> As provided in Article XII.21 ELC and Article 236 of the Flemish Community Decree of 27 March 2009, Article 156 of the French Community Decree of 26 March 2009 or Article 125 of the German-speaking Community Decree of 27 June 2005.

<sup>406</sup> Based on Article XV.122 ELC or Article 236 of the Flemish Decree of 27 March 2009, Article 156 of the French Community Decree of 26 March 2009 or Article 125 of the German-speaking Community Decree of 27 June 2005.



Article XII.20(1)(1) ELC provides that there is no general obligation for providers, when providing the services covered by Articles XII.17 (“mere conduit” services), XII.18 (“caching” services) and XII.19 ELC (hosting services), to monitor the information which they transmit or store, nor a general obligation to actively seek facts or circumstances indicating that some illegal activity is taking place. This does not preclude courts from imposing a temporary monitoring obligation (Article XII.20(1)(2) ELC).

However, these providers must promptly inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service (Article XII.20(2)(1) ELC). These providers must also communicate to the competent authorities, at their request, information enabling the investigation and identification of infringements committed through their services (Article XII.20(2)(2) ELC). In implementation of Article 19(1) of the E-Commerce Directive, Belgian law provides for a warning procedure (Article XV.31 ELC), a procedure for investigating and establishing the acts prohibited by Articles XII.17-XII.19 ELC (Article XV.2 ELC), as well as a settlement mechanism (Article XV.62 ELC). Criminal sanctions are provided for service providers, including a “level 3” sanction if they fail to communicate information to the competent authorities in accordance with Article XII.20 ELC (Article XV.118(3) ELC).

#### 6.2.3.5. Removal and blocking orders

Two types of injunctions are relevant under Belgian law in the case of online piracy of audiovisual sports content: (i) permanent injunctions; and (ii) interim injunctions.

As far as permanent injunctions are concerned, these can be obtained through several types of proceedings. First, rightholders can initiate regular proceedings on the merits against infringers and/or intermediaries based on tort (Article 1382 of the (old) Civil Code), as any violation of IP rights or other provisions of the ELC constitute a fault. In such a case, an injunction can be ordered by way of redress, besides other types of compensation (e.g. pecuniary damages requiring to prove the prejudice, etc.).

Secondly, provided that the audiovisual sports content is protected by copyright or related rights, rightholders (or any interested party – Article XVII.19(2) ELC) may initiate injunction proceedings (*stakingsvordering*) against infringers based on Article XVII.14(3) ELC and against intermediaries whose services are used by a third party for infringements based on Article XVII.14(4) ELC. Such proceedings are accelerated proceedings on the merits, which means that they are conducted like summary proceedings (i.e. with procedural rules allowing them to move faster than regular proceedings on the merits), but they can result in a permanent injunction on the merits. Unlike summary proceedings, the claimant is not required to demonstrate urgency. However, no damages can be claimed via injunction proceedings. Only an injunction can be claimed, which includes corrective measures as provided in Article XI.334(2)(1) ELC.

With regard to interim injunctions, these can be obtained through several types of proceedings. First, the judge may, at any stage of the proceedings (proceedings on the merits), order interim measures to further examine the claim, to settle an interlocutory dispute or to provisionally determine the situation of the parties. Either party can request



such measures at any stage of the proceedings by means of a simple written request (Article 19(3) of the Judicial Code). There is no requirement to demonstrate the urgency of the measures and the judge has a wide margin to evaluate which preliminary measure is appropriate. The measures may entail the prevention of an imminent infringement or a provisional prohibition against continuing the alleged infringement. The measures ordered are provisionally enforceable.

Secondly, summary proceedings and *ex parte* proceedings are available. If the claimant can prove urgency (i.e. if an interim injunction needs to be obtained without delay), he/she can apply to the president of the enterprise court, or of the court of first instance to order a preliminary decision in summary proceedings (Article 584(1) of the Judicial Code).<sup>407</sup> Urgency can be proved by demonstrating that an immediate decision is necessary to prevent considerable prejudice or serious inconveniences. In addition, the applicant must demonstrate the *prima facie* validity of the IP right and, in the context of the balancing exercise performed by the court, that his/her interest outweighs those of the alleged infringer.

In the case of proof of exceptional urgency, a preliminary decision can even be requested through *ex parte* proceedings (Article 584 (3) Judicial Code).

The measures requested in summary and *ex parte* proceedings may vary and include a temporary injunction to prevent any imminent infringement of an IP right, on a provisional basis and subject, where appropriate, to a recurring penalty payment. The court might also forbid the perpetration of the continuation of the alleged infringing activity or make such continuation subject to the lodging of guarantees to ensure the compensation of the rightsholder. Such measures may also include the temporary seizure or delivery up of the goods suspected of infringing an IP right so as to prevent their entry into or movement within the channels of commerce.

Any provisional and precautionary measures ordered through summary (and *ex parte*) proceedings will lapse if the petitioner does not initiate proceedings on the merits within the time period indicated in the order or, if no time period is indicated, within 20 working days or 31 calendar days, whichever is later, after service of the order (Article 1369ter(1) of the Judicial Code).

With regard, more specifically, to blocking injunctions, in light of the broad competences of the judges in both proceedings on the merits and in summary proceedings, it is possible to order such injunctions against an intermediary whose services are used by a third parties to infringe IP rights. In order to impose measures that block the further provision of services by an intermediary to an infringer who uses its services to infringe an IP right, it is not required for the intermediary to be liable, nor that

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<sup>407</sup> Urgency can be proved by demonstrating that an immediate decision is necessary to prevent considerable prejudice or serious inconveniences. In addition, the applicant must demonstrate the *prima facie* validity of the IP right and, in the context of the balancing exercise performed by the court, that his or her interest outweighs those of the alleged infringer.

proceedings be brought against the alleged infringer, nor that the intermediary be known in the first place.<sup>408</sup> When a blocking injunction is imposed on an Internet Service Provider (ISP), it has in practice two main types of technical means at its disposal to implement them. These are, on the one hand, Domain Name System (DNS) blocking and, on the other, Internet Protocol (IP) blocking. DNS blocking involves the ISP removing a specific domain name from its database or, in other words, removing the link between a domain name and an IP address. IP blocking, on the other hand, means that the ISP makes a specific IP address inaccessible from its servers, so that the user will no longer be able to connect to the desired site, either via the domain name or directly via the IP address.<sup>409</sup>

Regarding “dynamic” injunctions, Belgian courts have generally been reluctant so far to grant measures which could be described as “dynamic”.<sup>410</sup>

The existing measures and procedures are also available to the online piracy of live sports events. Indeed, courts can issue a blocking injunction to intermediaries whose services are used for the illegal transmission of live sports content. The fact that the event is live has no impact on the legal proceedings, only on the implementation of the injunction.

#### 6.2.3.6. Measures against end-users

On 21 April 2010, a draft bill “aimed at promoting cultural creation on the internet”<sup>411</sup> had been tabled by Senator Monfils, which provided for a four-stage graduated response procedure against subscribers (end-users). However, following the hearing of interested parties in the Senate on 11 May 2011, the senator withdrew the graduated response system from this bill.<sup>412</sup>

#### 6.2.3.7. Criminal sanctions

Provided that the audiovisual sports content is protected by copyright or related rights, rightsholders may file a complaint (*plainte*) with the authorities to trigger the criminal prosecution of infringement. The public prosecutor (*Ministère public*) is entitled to

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<sup>408</sup> Janssens K, “Targeting the middle man: het opleggen van maatregelen aan tussenpersonen in de strijd tegen namaak en piraterij” in Petillon F (ed), *Handhaving van intellectuele rechten in België. 10 jaar implementatie van de handhavingsrichtlijn 2004/48*, Larcier, 2018, p. 42.

<sup>409</sup> Campolini P, Hermoye S and Lejeune F, “Droit d’auteur et contrefaçon dans l’environnement internet : les injonctions contre les intermédiaires”, *A&M*, 2017/3, p. 257, No. 34.

<sup>410</sup> In other words, measures whose purpose is to order the blocking not only of domain names (or more generally of means to access the infringing content) existing at the time the injunction is issued, but also of any other domain names (or new means of access) which, after the injunction, would be used to share some infringing content and would be notified to the intermediary by the rightsholders.

<sup>411</sup> “Proposition de loi favorisant la protection de la création culturelle sur internet”, *Doc. Parl.*, Sénat, 2010-2011, No. 5-741/1.

<sup>412</sup> “Les travaux du groupe belge de l’ALAL”, *Ing-Cons.*, 2011/5-6, p. 613-614.



prosecute on its own motion. Various public authorities are empowered to conduct investigations into acts of counterfeiting and piracy.

Charges of criminal infringement are brought before, and tried by, a criminal court (*tribunal correctionnel*). A civil suit may, at the option of the claimant, be joined to a criminal prosecution.<sup>413</sup>

The general rules of the Criminal Code apply to criminal infringement. To start with, they allow for the confiscation of infringing copies and devices. Article XV.131/2 empowers the criminal court to seize earnings accruing from infringing acts, to take account of them in evaluating the corresponding damages, and to award them to the injured owner. Under Article XV.131/1, the court may order the closure, either temporary or final, of the establishment run by the defendant once convicted. Under Article XV.131/1, the court may order that the judgment be affixed on the infringer's property for a period that it will determine; it may also order that the judgment be published at the infringer's expense.

Criminal offences are punishable with a “level 6” penalty (Article XV.104 ELC), which consists of a criminal fine of between EUR 500 and EUR 100 000 and/or imprisonment of between one year and five years (Article XV.70(7) ELC). Various factors, including repeated convictions (Article XV.74), are relevant.<sup>414</sup>

**Table 20. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No, national copyright law
Specific rules on the use of sports content in social media	No (but a decision of the Belgian Supreme Court, dated 24 June 2015, ruled on the publication of protected content on social media)
Competent bodies (other than judicial bodies)	No
Entitlement to take legal action	Yes, any rightsholder is entitled to take legal action (e.g. producer, broadcaster)
Codes of conduct	No
Specific proceedings	No
Specific remedies	No

Source: Belgian response to European Audiovisual Observatory standardised survey

<sup>413</sup> Strowel A and Cabay J, “Belgium”, in Geller P E, Nimmer M B and Bently L (eds), *International Copyright Law and Practice*, New York, Matthew Bender, 2018, §8[4][b] .

<sup>414</sup> Ibid, p. 96-97.



**Table 21. National remedies in case of copyright infringement**

Typology	Description
<b>Criminal prosecution and criminal sanctions</b>	Yes
<b>Differentiation of criminal sanctions based on acting for profit</b>	No
<b>Removal and blocking injunctions</b>	Yes
<b>Dynamic and/or live blocking injunctions</b>	Not mentioned in the law
<b>De-indexing injunctions</b>	Yes
<b>Damages and orders to cease and desist</b>	Yes
<b>Administrative offence and remedies</b>	No
<b>Notice and take-down procedures</b>	Not provided by legislation, but broad frame defined by case law

Source: Belgian response to European Audiovisual Observatory standardised survey

## 6.2.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions, in relation to online infringement of audiovisual sports content.

**Table 22. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
<b>Communication to the public</b>	<p>The retransmission of work previously broadcast via cable or satellite by the original broadcasters by means of an internet stream made available to the subscribers of a system, constitutes a communication to public.</p> <p>There is no communication to the public in cases in which ISPs offer access to the internet which contains unauthorised copyrighted materials, within the meaning of Article XI.165, but the ISP's liability is subject to the conditions of the liability exemption regime.</p>	<p>Not directly related to sports content:</p> <p>Commercial Court of Antwerp dated 4 November 2014</p> <p>Brussels Court of First instance dated 13 March 2015</p>
<b>Hosting providers' knowledge and awareness</b>	<p>"Deliberate ignorance" is not a means to avoid knowledge and awareness.</p>	<p>Court of Cassation</p>



Content	Substance of the decision	Decisions
of illegal activity		
Notice and take-down	N/A	N/A
Measures against end-users	N/A	N/A
Criminal sanctions	N/A	N/A

Source: Belgian response to European Audiovisual Observatory standardised survey

#### 6.2.4.1. Communication to the public

No (published) case law was identified which applies the notion of communication to the public to the dissemination of audiovisual sports content.

However, two judgements, which deal with elements concerning the notion of communication to the public in relation to an audiovisual work are relevant.

A judgment of the Commercial Court of Antwerp dated 4 November 2014<sup>415</sup> contains interesting elements concerning the notion of communication to the public in relation to an audiovisual work. This case concerns the Bhaalu system, which was launched by Belgian company Right Brain in 2013. The system functions as a modern video recorder and allows a user to store TV programmes in the cloud and then stream them to their TV screen, smartphone or tablet, wherever that user may be at the time. However, Right Brain marketed Bhaalu without having concluded any agreement with the rightsholders (i.e. the broadcasters). The Flemish broadcasting organisations VRT, Medialaan and SBS Belgium argued that Right Brain was infringing their copyrights and sued Right Brain for damages. The questions at issue were whether the use of the Bhaalu system was within the scope of the private copying exception,<sup>416</sup> which does not require the consent of the rightsholders, and whether there was a communication to the public, which does require the consent of the rightsholders.

First, in its judgment, the court referred to Article XI.215(1°)(d) ELC, which provides that only the broadcaster has the right to communicate its broadcasts in such a way that they are accessible to members of the public at a place and time individually chosen by them. The court then examined whether there was a communication to the public that required the consent of the rightsholder. In this regard, the court concluded that if the Bhaalu system retransmits works previously broadcast via cable or satellite by the original broadcasters (VRT, Medialaan and SBS) by means of an internet stream made available to the subscribers of the Bhaalu system, who can receive this retransmission by logging on

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<sup>415</sup> President of the Commercial Court of Antwerp, 4 November 2014, AM 2015/1, pp. 80-92. The judgment was appealed.

<sup>416</sup> Article XI.190(9) ELC.



to the Bhaalu server, this constitutes a communication to the public (although these users are entitled to receive this broadcast on their television set). Finally, the court analysed the criterion of a 'new public' as developed by the Court of Justice in its *TVCatchup* judgment.<sup>417</sup> The Commercial Court of Antwerp rightly found that this criterion was not relevant in this case. After all, if the retransmission takes place by means of another specific technical method, a renewed consent of the rightsholders is already required, so that it is not necessary to examine whether there is an expanded audience. Since the consent of the broadcasters was not obtained, the court concluded that the Bhaalu cloud video recorder constitutes an unauthorised communication to the public and that the Bhaalu system can no longer be commercialised.

Another judgment of the Brussels Court of First Instance of 13 March 2015<sup>418</sup> also contains some interesting elements. In this case, the Belgium collective management organisation SABAM considered that, since ISPs offer access to the internet, which contains copyrighted materials, ISPs can be considered as communicating these materials to the public within the meaning of Article XI.165 ELC. The court noted that all parties agreed on the fact that the communication is preceded by a primary communication to the public within the meaning of Article XI.165. This initial communication is made by internet users or content providers and is addressed to the entire internet community (or part of it, if access to the content is subject to conditions) and subject to copyright. The court then considered whether the ISPs' role is limited to the provision of equipment enabling communication, or whether it is broader. If the former applies, there is no communication subject to copyright, since recital 27 of Directive 2001/29 makes it clear that the mere provision of physical facilities enabling communication does not amount to communication under copyright law. Under the latter hypothesis, the court investigated whether the situations of "upstream" and "downstream" internet traffic mentioned by SABAM could include a second communication, which would follow the initial communication and would also be subject to copyright. Upstream internet traffic allegedly includes communication from internet users who upload copyrighted materials. The court found that, in this case, the user's ISP is the only recipient of the communication. Therefore, there is no communication "to the public" within the meaning of Article XI.165.

In a situation of downstream traffic, the alleged communication is made by ISPs to their customers and occurs whenever customers download copyrighted content from the internet. The court found that ISPs merely enable the "originating communication", since the ISPs' customers are part of the public to whom the "originating communication" is addressed. As a result, there is no other communication than this one. The court concluded that ISPs are not components of the communication process but intermediaries indispensable to the functioning of the internet, which is the medium chosen by internet users to communicate. The court also made clear that the fact that measures can be taken

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<sup>417</sup> CJEU, 7 March 2013, *TVcatchUp*, C-607/11.

<sup>418</sup> Court of First Instance Brussels, 13 March 2015, *IRDI*, 2015, p. 101.



against intermediaries enabling counterfeiting does not imply that intermediaries are subject to copyright.

As a result, the court concluded that ISPs do not communicate copyrighted content to the public within the meaning of Article XI.165 of the Code of Economic Law and therefore should not pay copyright fees to SABAM.<sup>419</sup> The appeal lodged by SABAM was rejected both in appeal (judgement of the Brussels Court of Appeal of 3 June 2016) and in cassation (judgement of 20 October 2017).

#### 6.2.4.2. Online infringement of audiovisual sport content

In Belgium, no case law has been detected concerning online infringement of audiovisual sports content.

#### 6.2.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness acts expeditiously to remove or to disable access to the information.

In Belgium, the liability exemption system for hosting providers is set forth in Article XII.19 ELC, which provides for an exclusion of liability (criminal and civil) for any hosting ISP acting as an intermediary within the meaning of this law, insofar as its activity is of a purely technical, automatic and passive nature and, consequently, the intermediary has neither knowledge of nor control over the information that is transmitted or stored.<sup>420</sup>

In order to benefit from this exemption, the intermediary cannot therefore have: (i) actual knowledge, resulting, for example, from a notification of the presence of illegal content (notice and take-down); or (ii) indirect knowledge through facts suggesting the illegal nature of the information. Once knowledge has been established, the exemption will only apply if the service provider acts promptly to remove or block access to the illegal information.<sup>421</sup>

With regard to so-called "deliberate ignorance", the Belgian Supreme Court has already ruled that a participant in a criminal offence cannot take measures so as not to

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<sup>419</sup> L'Ecluse P and Lefever V, "Brussels Court of First Instance holds that Internet service providers should not pay copyright fees", 20 April 2015, Brussels Court of First Instance Holds that Internet Service Providers Should Not Pay Copyright Fees- Articles Droit de la propriété intellectuelle - lexgo.be, <https://www.lexgo.be/fr/articles/ip-it-telecom/droit-de-la-propri-t-intellectuelle/brussels-court-of-first-instance-holds-that-internet-service-providers-should-not-pay-copyright-fees,94426.html>.

<sup>420</sup> Cass., 3 February 2004, AM 2005/3, p. 259.

<sup>421</sup> Jongen F and Strowel A, *Droit des médias et de la communication*, Bruxelles, Larcier, 2017, p. 788.



know about the planned offence and then hide behind the argument of ignorance.<sup>422</sup> Therefore, the design of a website so as to avoid any concrete knowledge of the illicit sharing of protected content thanks to the website may nevertheless trigger some liability of the intermediary.<sup>423</sup>

#### 6.2.4.4. Notice and take-down requirements

In a 2001 judgment in the case of *Belgacom v. IFPI – Universal*, the Brussels Court of Appeal drew specific guidelines for copyright owners and ISPs, which resemble a framework for notice-and-takedown.<sup>424</sup> Although such guidelines have not been statutorily confirmed, they may be useful to determine whether ISPs remain shielded after a copyright infringement notice. The guidelines may be summarised in the following three steps:<sup>425</sup>

- The claimant, for example, the rightholder, should notify the service provider of the presence of content to which the claimant objects and state the reasons why, prima facie, the content is infringing or otherwise illegal. The notice must be sufficiently specific and detailed so as to allow the hosting provider to identify the disputed content.<sup>426</sup>
- The hosting service provider should prove within three business days that the flagged content is legal, in the absence of which it must suspend or restrict access to it.
- The claimant should accept liability, and hold the service provider harmless, in the event that the content at issue is subsequently declared to have been legally posted.

In this respect, the Belgian courts have been quite ready to impose injunctive relief on online intermediaries, the scope of which has been questioned by the CJEU. In the case of SABAM, an order was imposed by a Brussels court of first instance for an access provider to generally filter its service, at its own expense, to prevent file sharing.<sup>427</sup> In another case, a social-network provider was similarly ordered to monitor for copyright infringement the

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<sup>422</sup> It should also be noted that the recent case law of the European Court of Human Rights and Belgian and European commentators tend to advocate for a more flexible criterion of knowledge.

<sup>423</sup> Cass., 16 December 2003, *RABG*, 2005, p. 546.

<sup>424</sup> Brussels, 13 Feb. 2001 (*NV Belgacom Skynet v. Vzw IFPI Belgium & NV Universal*), A&M, 2001/2, 279, English translation in ECDR, 2002, p. 57.

<sup>425</sup> Strowel A and Cabay J, “Belgium”, in Geller P E, Nimmer M B and Bently L (eds), *International Copyright Law and Practice*, New York, Matthew Bender, 2018, §8[4][c][ii].

<sup>426</sup> See also Civ. Brussels, 2 April 2015 (*X v. Y and Telenet*), A&M, 2015/5-6, p. 398

<sup>427</sup> Civ. Brussels, 29 June 2007, A&M, 2007/5, 476, IRDI, 2007, 442, note F. Petillion, *on appeal to Brussels*, 28 Jan. 2010 (*SABAM v. Scarlet Extended*), A&M, 2010/2, 176, referring questions to CJEU in Case C-70/10, decided on 24 Nov. 2011.



user-generated content that it hosted.<sup>428</sup> The CJEU has clearly rejected the possibility of imposing such a filtering measure on intermediaries for two reasons: (i) the imposition of such an obligation constitutes a general surveillance obligation which is formally prohibited by Article 15(1) of Directive 2000/31 and (ii) the measure in question unduly infringes various fundamental rights recognised by the EU legal order, including the intermediary's freedom of enterprise and the fundamental rights of internet users to receive and communicate information and to protect their personal data.

In the case of online piracy of audiovisual sports content, provided that content is protected by copyright or related rights, the rightholder may notify the service provider of infringement and request 'prompt' removal in accordance with the liability exemption regime in Chapter 6 of Book XII ELC. Depending on the service provider, a notice and take-down procedure may be in place. If not, reference might be made to the aforementioned Brussels Court of Appeal case law. However, the assessment of 'prompt' action will still be made on a case-by-case basis.

#### 6.2.4.5. Removal and blocking orders

In order to remove and block illegal content, Belgian courts often apply blocking injunctions against intermediaries such as access providers. This method is used in the context of digital networks. It regularly happens that the offenders cannot be identified or reside in jurisdictions far away from the place of the damage, and there is thus a need to direct the action against the intermediaries located in Belgium.<sup>429</sup>

The case law essentially concerns the following types of intermediaries:<sup>430</sup>

- Internet Service Providers (ISPs): quite an extensive jurisprudence<sup>431</sup> concerns the actionability and possible liability of ISPs; holders of IP rights or their representatives (for example, SABAM) have on several occasions requested courts to block access, by the ISP's clients, to peer-to-peer file-sharing sites (for example, The Pirate Bay). The notion of an intermediary is broad and is not limited to intermediaries expressly referred to in the law on electronic commerce such as ISPs and hosting providers. This notion may include, for example, an operator that provides so-called housing services (i.e. rental services of computer servers

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<sup>428</sup> Civ. Brussels, 28 June 2010 (*SABAM v. Netlog*), referring questions to CJEU in Case C-360/10, decided on 16 February 2012.

<sup>429</sup> Brison F and Vanhees H, p. 1229.

<sup>430</sup> Belgian national group (AIPPI), "Joint liability for IP infringement", pp. 4-5, available at : Joint liability for IP infringement - Report Belgium - Version 4.5 - 23-04-2018 [5094585].docx (uliege.be), <https://orbi.uliege.be/bitstream/2268/245996/1/Joint%20liability%20for%20IP%20infringement%20-%20Report%20Belgium%20-%20final.pdf>.

<sup>431</sup> See for example, Court of Cassation, 22 October 2013, *IRDI*, 2014, p. 365; Brussels, 28 January 2010, *AM* 2010, p. 176; Antwerp, 26 September 2011, *RABG*, 2011, p. 1269; Brussels Court of First Instance, 29 June 2007, *IRDI*, 2007, p. 442.



allowing access to the internet), an operator that provides domain name management services, an operator that offers its subscribers an online service allowing them to record and access television broadcasts in violation of the rights of the broadcaster at a time and place individually chosen by each subscriber.

- Online marketplaces: other cases involve online marketplaces, such as eBay.
- Transport, shipping agents, etc.: another category of recurring cases concerns intermediaries that play a role in the transportation and importation of goods that enter the territory of the EU and infringe IP rights.<sup>432</sup>

Furthermore, there is some case law on the type of blocking recommended. In particular, in a judgment of 26 September 2011, the Antwerp Court of Appeal considered that it was its duty to specify the details of the measures imposed. In the context of an injunction against ISPs, the court considered that DNS blocking was the most acceptable solution (instead of IP blocking). According to the court, in addition to the fact that the IP blocking technique requires more investment, it entails the risk of blocking all the internet sites grouped under the same IP address and thus making perfectly legal and lawful information inaccessible at the same time.

The procedure for obtaining a blocking injunction only requires the claimant to demonstrate the right asserted and its violation. The one requirement to be fulfilled is the usefulness of the injunction. Indeed, Belgian law does not require intermediaries to have knowingly adopted the infringement of IP rights. Article XVII.14 of the same code confirms the absence of any condition of fault and/or "intention" of the infringer or the intermediary.<sup>433</sup>

Regarding dynamic injunctions, Belgian courts have so far generally been reluctant to grant such measures. By way of illustration, the Brussels Court of First Instance, in its decision of 9 August 2013, refused to grant an application to make inaccessible not only the three domain names specifically identified in the proceedings, but also any new domain name notified by the applicant which would refer to a website essentially devoted to the illegal supply of products, components or information which infringed the directory of rightsholders. The court recognised that the appearance of new means of access to infringing websites is characteristic of the use of the internet and that it is a common means of committing such copyright infringements. However, it considered that granting as broad a measure as the one requested by the applicant would be contrary to Article 6 of the Judicial Code.

Nevertheless, blocking injunctions, in other circumstances, have been applied. In particular, in the light of the CJEU UPC Telekabel Wien judgment, the Amsterdam Court of Appeal recently ordered a dynamic blocking injunction. An argument in favour of dynamic

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<sup>432</sup> See for example, Commercial Court Antwerp, 6 May 2008, *IRDI*, 2008, p. 260; Commercial Court Antwerp, 24 February 2011, *IRDI*, 2011, p. 320.

<sup>433</sup> "[T]he president of the commercial court shall ascertain the existence and order the cessation of any infringement of an intellectual property right, [...] § 4. The president may also issue a cessation order against intermediaries whose services are used by a third party to infringe a right referred to in paragraphs 1 to 3"





injunctions can also be found in a Belgian Supreme Court judgment of 22 October 2013, concerning the blocking of access to content hosted by the server linked to the domain name *thepiratebay.org* by using all possible technical means including, at the very least, the blocking of all domain names that redirected internet users to this server. One of the ISPs' grounds against the dynamic blocking injunction consists in the fact that the blocking order and also the list of domain names to block as established by the court would represent a violation of Article 15(1) of the E-Commerce Directive, concerning the general monitoring prohibition.

On this last point, the court dismissed the appeal and held that the order to block access to the illicit content, including also all the domain names, did not entail the monitoring obligation, as provided by the E-Commerce Directive. Thus, the ISPs were not asked to control the information or actively monitor facts or circumstances, indicating the illegal activity.

#### 6.2.4.6. Measures against end-users ordered by the courts

Belgian courts do not issue measures against end-users.<sup>434</sup>

#### 6.2.4.7. Compensation criteria adopted by the courts

No Belgian case law has been detected concerning online piracy of audiovisual sport content.

From a legislative perspective, the civil law requires: i) a material component, corresponding to the royalty that the claimant could normally obtain for the infringing use of his/her work; and ii) a moral component, corresponding to the fact that the author's exclusive rights have been violated. The following factors were considered by courts: i) as material components, losses incurred on the market<sup>435</sup> and costs of discovery and of litigation; ii) as moral components, the impact of sales at any discounted price upon the

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<sup>434</sup> This is also due to the fact that rightsholders in Belgium always preferred the strategy of cutting off the illegal offer and promoting legal content instead of going after end-users.

<sup>435</sup> In the absence of specific evidence, courts use royalty rates fixed by collecting societies as customary indications of market damages, even though those fees are not binding upon third parties. See Brussels, 23 March 2001 (*Le Vif Magazine v. SOFAM & Wibin*), A&M, 2001, p. 375, note Derclaye E and Cruquenaire A, JLMB, 2002, p. 859; Brussels, 25 September 2001 (*Ed. Des Eperonniers v. SOFAM*), A&M, 2004, p. 327; Civ. Brussels, 30 May 2003 (*SOFAM v. Père Ubu*), A&M, 2004, p. 337; Brussels, 24 May 2012 (*Shimera*), ICIP, 2012/2, p. 373 (treating the tariffs used by a collecting society as a reference point for the assessment of damages, but finding that the imposition of a penalty for failing to ask for a prior authorisation from the rightsholder was not compatible with the requirement of Article 13 of IPRED, that damages be "appropriate to the actual prejudice"). Cf. Brussels, 11 October 2013 (*Bulex v. SABAM*), A&M, 2014/1, 34, JLMB, 2014/10, p. 462 (assessing damages by reference to collecting society tariffs, including a 30% penalty clause imposed by the collecting society for failing to seek prior authorisation).



claimant's credibility in the marketplace and upon the value of its goods, the claimant's absence of control on the quality of infringing goods, the resulting reduction of the claimant's bargaining power, etc.

On the other hand, the Belgian Supreme Court may overturn a decision granting the amount of claimed damages by referring to the need to finance the general fight against piracy or by referring to the need to have, on top of royalties, an additional lump sum to have some deterrent effect.<sup>436</sup> That said, it must be recalled that civil actions may be joined to criminal prosecutions for infringement.<sup>437</sup>

The plaintiff has the right to full compensation for the prejudice suffered and, when the amount of the prejudice cannot be assessed, the court can impose the payment as compensation relying on a rule of reason and equity.

The judge may order the delivery up to the plaintiff of the infringing goods, as well as of instruments used to commit the infringement.

Where it is proven that the defendant acted with "bad faith", the judge may order the transfer of the benefits resulting from the infringement to the plaintiff,<sup>438</sup> and only the expenses directly related to the infringing activities may be deducted to calculate the benefit made by the infringer. Also, in such cases, the judge may order the confiscation of the infringing goods and of instruments used for the infringement.<sup>439</sup> If the defendant did not act in bad faith, the award will be offset against the damages due to the plaintiff.

#### 6.2.4.8. Criminal sanctions ordered by courts

There are no cases related to the application of criminal sanctions to online piracy of audiovisual sports content in Belgium.

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<sup>436</sup> Court of Cassation, 13 May 2009 (*X v. SABAM and IFPI Belgium*), A&M, 2009/4, p. 384.

<sup>437</sup> On criminal prosecutions, see § 8[4][b] *infra*. In some of these joined criminal and civil cases, awards of civil damages have reached hundreds of thousands of euros and in any event have been based on all the various factors explained here as applicable in civil cases. See Liège, 17 October 2007, A&M, 2008/1, p. 43; Antwerp, 19 October 2007, A&M, 2008/1, p. 22; Corr. Brussels, 21 February 2008, A&M, 2008/2, p. 113.

<sup>438</sup> See Comm. Antwerp, 5 June 2015 (*SABAM v. ID&T*), *IRDI*, 2015, p. 246 (allocating SABAM half of the gross turnover of the organiser of several electronic music festivals, the organiser having given false information on his revenue in order to limit the amount of royalties to be paid to SABAM and thus having acted in bad faith).

<sup>439</sup> Since Belgian law does not require any special knowledge of the infringer as a condition for being ordered to pay damages, it thus appears stricter than Article 13 of the IPRED, which refers to the person who knowingly, or with reasonable grounds to know, engages in infringing activities. The Copyright Act does not expressly distinguish the two ways for calculating the damages proposed by Article 13 of the IPRED, that is, either full compensation of the prejudice or a lump sum of at least the royalties which would have been due.

## 6.2.5. Reports and studies

On 15 December 2020, the *Conseil supérieur de l'audiovisuel* (the CSA) published its study "*Médias: attitudes et Perceptions*",<sup>440</sup> on the consumption patterns of audiovisual media services in the *Fédération Wallonie-Bruxelles* (FWB). With this report, the CSA also carried out a complementary analysis on internet offers of illegal audiovisual content. In general, the study reported that consumers consider illegal video-on-demand as a form of free video-on-demand. Among its main conclusions, the CSA recommended (i) organising awareness-raising actions towards retailers involved in the resale of these illegal offers (and the general public); (ii) reflecting on the development of an adapted audiovisual offer; (iii) ensuring workable competition.

It is also worth noting that on 29 June 2012, the Intellectual Property Council issued an opinion on the enforcement of copyright and related rights on the internet,<sup>441</sup> aimed at providing an overview of the various laws applicable to online piracy.

However, these reports do not specifically address the subject of illegal online transmission of sports events.

Regarding national studies and reports on technologies and business models used for the illegal streaming of sports content, on 17 December 2019, the Belgian Entertainment Association gave a presentation on the most commonly used technologies for illegal streaming of content (not specifically sports content), presenting the following five means of piracy:

- Streaming websites characterised by the following elements: films or media played on mobile phones, tablets, laptops or games consoles; media files saved on a separate server or device; no download software needed and quicker option than torrents;
- Torrent websites<sup>442</sup> with the following characteristics: torrent file download on the device through the use of a torrent website (trackers); online distribution with the extension ".torrent"; requires torrent software; contains all kind of files (audiovisual, music, books, software, games, etc.). It is important to note that the torrent-software itself is not illegal;

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<sup>440</sup> Available at : CSA Rapport scientifique.docx ; <https://www.csa.be/wp-content/uploads/MAP/20201215%20CSA%20Rapport%20scientifique%20export%20final.pdf>, Le droit d'auteur sur internet | SPF Economie (fgov.be), <https://economie.fgov.be/fr/themes/propriete-intellectuelle/droits-de-pi/droits-dauteur-et-droits/droits-dauteur/le-droit-dauteur-sur-internet>.

<sup>441</sup> Available at : Handhaving van auteursrecht op het internet - Ontwerp van advies van de Raad voor de Intellectuele Eigendom (fgov.be), <https://economie.fgov.be/sites/default/files/Files/Intellectual-property/Avis%20Conseils%20Propri%C3%A9t%C3%A9%20intellectuelle/Avis-CPI-29062012.pdf>.

<sup>442</sup> Such technology is also particular because the user who download something also uploads content at the same time. In terms of copyright, it means that the right of communication to the public is also involved, not just the reproduction right.



- Cyberlockers/file hosting sites with the following characteristics: “file hosting” platform used to share a large amount of files; via URL-link, free accounts with limited storage; different from torrent website (file is downloaded from one source) and no download software needed;
- Streaming applications: free software allowing users to stream films, series, etc.; files are streamed and available for desktop PCs, smartphones, tablets and with Chromecast, Apple TV, etc. As far as sports content is concerned, there are also many streaming sites that allow consumers to view live sports content. For example, the [www.footlive.me](http://www.footlive.me) website broadcasts a large number of football matches (Belgian and other) live via its platform. The servers of these sites are usually hosted in foreign countries;
- IPTV (Internet Protocol TV) or TV channels via the internet: offers 7 000+ up to 12 000 broadcasting channels worldwide; TV channels, films, live broadcasting (linear), also on-demand content, films and series; video files from different sources (servers) in data packages are retrieved from the internet; IPTV channels can be viewed on many devices such as the use of VLC on PCs, etc. and very cheap price subscription (EUR 5-20 per month or EUR 45-150 per year).

With reference to sports content, the head of the CSA's Operator and Distributor Unit reported that illegal transmission of sports content tends to take place through IPTV and streaming websites (live). Indeed, the two main ways to access the content are (i) by cracking the encryption of the satellite signal; or (ii) purchasing a legitimate subscription (for example, a Proximus Sport subscription) and then digitising the signal at the output of the decoder and cracking the (High Definition Multimedia Interface (HDMI) and then recovering the signal which will subsequently be transmitted illegally. The pirated signal will then be distributed by CDNs (Content Delivery Networks).

There are no studies describing the legal offers of sports content in Belgium. However, the CSA has a “Guide to Media, Companies, Groups and Sectors” tab on its website which gathers and processes a wide range of information on audiovisual media accessible with a single click (television, radio, on-demand services, electronic media services, etc.). This search tool allows users to know which services are available; who they belong to; what their content is; which media groups are active in the Wallonia-Brussels Federation; and the degree of independence and autonomy of television and radio stations. This information is regularly updated and comes from the annual reports which publishers and distributors are obliged to submit to the CSA, as well as from other public or private sources.

Furthermore, several awareness campaigns have been carried out, especially through videos.<sup>443</sup>

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<sup>443</sup> An example of an awareness campaign is the following one:  
[https://www.youtube.com/watch?v=lf9T\\_Hppqjk](https://www.youtube.com/watch?v=lf9T_Hppqjk).

Several associations of broadcasters or rightsholders actively work to address the issue of online piracy of audiovisual sports content.

## 6.2.6. Data compilation

This country report is based on data compiled by Alain Strowel, a professor at the University of Saint-Louis in Brussels and UCLouvain for the French Community and Hannes Abraham, a member of the Brussels Bar since 2012 and a Senior Associate, member of the departments of Intellectual Property & IT Law and Commercial & Corporate Law at Pierstone Brussels.

Belgian public authorities and associations specialised in the audiovisual sector were contacted in order to compile the questionnaire: *Service général de l'Audiovisuel et des Médias*; *Conseil supérieur de l'audiovisuel*; *Société des auteurs et autrices de littérature et de documentaire*; *Union des producteurs francophones de films*; the Belgian Entertainment Association; Cinergie. The *Conseil supérieur de l'audiovisuel* also participated in an interview and the Belgian Entertainment Association provided several documents on the technologies used for committing online piracy.



## 6.2.7. Annex

**Table 23. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive (98/84/EC)</b>	At the federal level: Act of 12 May 2003 replaced by Books of the Code of Economic Law (ELC) Flemish Community: Decree of 27 March 2009 regarding radio broadcasting and television French Community: Decree of 26 March 2009 regarding audiovisual media services German-speaking Community: Decree of 27 June 2005 regarding radio and television broadcasting
<b>Article 5 of Directive 98/84/EC – Infringing activities</b>	Article I.18 ELC; Article XII.21 ELC; Article 2,42° of the Decree of 27 March 2009; Article 1,56° of the Decree of 26 March 2009; Article 2,45° of the Decree of 27 June 2005
<b>InfoSoc Directive (2001/29/EC)</b>	Act of 22 May 2005 (incorporated into the ELC)
<b>Article 6 ISD – Obligations as to technological measures</b>	Article XI.291 ELC; Article I.13(7°) ELC
<b>Article 8 – Sanctions and remedies</b>	Article XI.291 ELC; Article I.13(7°) ELC
<b>IPRED (2004/48/EC)</b>	Judicial Code; Act of 12 May 2003 replaced by provisions of the ELC
<b>Article 6 IPRED – Evidence and Article 7 IPRED – Measures for preserving evidence</b>	Article 871 of the Judicial Code Article 1369bis/1 of the Judicial Code
<b>Article 8 IPRED – Right of information</b>	Article XI.334(3) ELC
<b>Article 9 IPRED – Provisional and precautionary measures</b>	Article 19(3) of the Judicial Code Article 584(1) of the Judicial Code
<b>Article 10 IPRED – Corrective measures</b>	Article XI.334(2)(1) ELC, Article 2.22(1); Article 3.18(1) BCIP
<b>Article 11 IPRED – Injunction</b>	Article XI.334(1)(1) ELC; Article XIV.14(1) ELC
<b>Article 12 IPRED – Alternative measures</b>	-
<b>Article 13 IPRED – Damages</b>	Article XI.335(1) ELC; Article 2.21(1); 3.17(1) BCIP
<b>E-Commerce Directive (2000/31/EC)</b>	Act of 11 March 2003 (incorporated in the ELC)
<b>Article 12-15 ECD – Liability of ISPs</b>	Article XII.17-20 ELC
<b>Article 17 ECD – Out-of-court dispute settlement</b>	No specific transposition
<b>Art 20 ECD – Sanctions</b>	Transposed in various provisions



EU directives	National law
DSM Directive EU (2019/790)	Not transposed (as at October 2021)

## 6.3. BG – Bulgaria – National legal summary<sup>444</sup>

### 6.3.1. General legal framework

#### 6.3.1.1. National legislation on copyright<sup>445</sup>

In Bulgaria, the Law on Copyright and Neighbouring Rights (as amended at 13 December 2019) (*Закон за авторското право и сродните му права, ЗАПСП* – the Copyright Law)<sup>446</sup> is the general law that regulates the scope and the enforcement of copyright and related rights.

Other laws are relevant in relation to copyright enforcement, as follows:

- The Law on Administrative Offences and Penalties (*Закон за административните нарушения и наказания, ЗАНН*)<sup>447</sup>
- The Penal Code (*Наказателен кодекс, НК*)<sup>448</sup>
- The Code of Criminal Procedure (*Наказателно-процесуален кодекс, НПК*).<sup>449</sup>

In Bulgaria, copyright infringement can be considered both a criminal offence and a civil law violation.

Articles 97 and 98 of the Copyright Law regulate administrative sanctions for infringement of certain types of rights, and for repeated infringement of the same rights within 12 months of the first infringement. All remaining questions not explicitly regulated under the Copyright Law are to be resolved in accordance with the Law on Administrative Offences and Penalties. Criminal sanctions are governed by the Penal Code.

The Bulgarian Penal Code does not differentiate between crimes depending on acting for profit. Overall, acting for profit is not a condition for imposing administrative fines. However, acting for profit is explicitly referred to with regard to administrative fines

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<sup>444</sup> It was not possible to receive feedback on the country report concerning Bulgaria during the checking round with the national competent institutions.

<sup>445</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>446</sup> <https://lex.bg/laws/ldoc/2133094401>.

<sup>447</sup> <https://www.lex.bg/bg/laws/ldoc/2126821377>.

<sup>448</sup> <https://www.lex.bg/laws/ldoc/1589654529>.

<sup>449</sup> <https://www.lex.bg/laws/ldoc/2135512224>.



concerning the production, distribution, marketing or importing, as well as the possession of decoding devices, which may give access to persons outside the defined broadcasting audience (Article 97(5)). Furthermore, an explicit reference to the term “acting for profit” appears in Article 97(7) with reference to Technical Protective Measures (TPMs). However, the sanctions are the same as the ones listed for administrative infringements of other rights.<sup>450</sup>

### 6.3.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>451</sup> has not been transposed to date (as at May 2021).

**Table 24. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	N/A
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	<p>Law on Copyright and Neighbouring Rights (<i>Закон за авторското право и сродните му права, ЗАПСП</i>) (“Copyright Law”)</p> <p>The Criminal Code (<i>Наказателен кодекс (НК)</i>)</p> <p>Law on Trademarks and Geographical Indications (<i>Закон за марките и географските означения</i>)<sup>452</sup></p> <p>Regulation on Border Measures for Protection of Intellectual Property Rights (<i>Наредба за граничните мерки за защита на права върху интелектуална собственост</i>)<sup>453</sup></p>
<b>InfoSoc Directive</b>	Copyright Law

<sup>450</sup> This aspect has also been confirmed by case law, as for example in judgment No. 1189/2014 of 31 May 2014 of the Sofia Regional Court. In this case, it was established that in order to treat an act as an infringement within the meaning of Article 97 of the Copyright Law, it is sufficient to establish that the copyrighted works have been used illegally. Thus, the act at issue in this case was punishable from the moment free access to the films in question was granted on the website administered by the applicant. The issue in this case was not so much whether the applicant intended to make personal profit from his actions, but the fact that there had been an infringement of the right of the rightsholder with the resulting negative consequences.

<sup>451</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

<sup>452</sup> <https://www.lex.bg/laws/ldoc/2134680576>.

<sup>453</sup> <https://www.lex.bg/laws/ldoc/-549403134>.



EU directive	National law
E-Commerce Directive	Electronic Commerce Act (as amended at November 2020) <sup>454</sup>
Conditional Access Directive	Copyright Law

Source: Bulgarian response to European Audiovisual Observatory standardised survey

## 6.3.2. National rules applicable to audiovisual sports content

### 6.3.2.1. Legal definitions of “broadcaster” and “sports event organiser”

There is no legal definition of “broadcaster” under Bulgarian law. However, when referring to the term “broadcasting organisations” the Copyright Law refers to radio and television organisations. In particular, Article 91(3) states that where the radio or television organisation under paragraph (1), or a person duly authorised by it, restricts the number of persons receiving the programme by encrypting the signal that contains it, consent shall be considered given only if the decrypting device has been provided by the broadcasting organisation or with its consent.

Furthermore, there is no legal definition of “sports event” or “organiser” in Bulgarian law. However, the Physical Education and Sports Act 1996 states that sports organisations are legal entities, which carry out training, competitive and organisational-administrative activity in one or several kinds of sports and develop and popularise physical education and sport (Article 10(1) of the same Act).

Similarly, there is no legal definition of “sports event broadcast” under Bulgarian law.

### 6.3.2.2. Legal protection related to sports events

The Copyright Law does not grant any intellectual property rights to sports event organisers. However, the Physical Education and Sports Act provides specific legal protection for sports event organisers (Article 13 on protection for sport clubs and Article 19 regarding sports federations), including exclusive rights for advertising and television and radio broadcasting of all sports competitions they organise.

On the other hand, the Copyright Law protects the initial broadcast of radio and television broadcasters, by granting them the exclusive right to authorise the rebroadcasting, recording and offering to the public of the programmes subject to compensation (Article 91). Therefore, broadcasts, including broadcasts of sports events *per argumentum a fortiori*, are protected on the condition that they form part of the

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<sup>454</sup> <https://www.lex.bg/en/laws/ldoc/2135530547>.

programmes of the broadcasting organisation. The rights granted to radio and television broadcasters are provided for in Title Two of the Copyright Law (“Rights neighbouring to copyright and specific rights”).

In the case of illegal broadcasting or illegal online transmission of a sports event broadcast, broadcasters are entitled to take legal action based on their rights in the broadcast.

On the other hand, as previously mentioned, the Physical Education and Sports Act provides specific legal protection for sports event organisers with regards to the television and radio broadcasting of events organised by them. However, since there is no specific enforcement procedure established for sports events organisers in the Copyright Law, they shall be entitled to take legal action according to the general civil procedure established in the Civil Procedure Code.

### 6.3.2.3. Other specific rules applicable to sports events

There are no other specific rules applicable to sports events in national law. In addition, there are no specific rules about the use of sports content in social media in Bulgaria.

**Table 25. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
Broadcaster	No	Related rights
Sports event organiser	No	Non-statutory rights (rights to authorise television and radio to broadcast the competitions they organise (non-IP rights))

Source: Bulgarian response to European Audiovisual Observatory standardised survey

## 6.3.3. Remedies and sanctions applicable in the event of infringement

### 6.3.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

Sanctions and remedies are provided in Articles 95 to 98 of the Copyright Law. According to Article 95 of the Copyright Law, whoever infringes copyright or a related



right (or “neighbouring” right) protected by law owes compensation to the rightsholder or to the person to whom the exclusive right has been assigned. This compensation is due for all damages, which are a direct and immediate consequence of the violation (Article 95(2)). In determining the amount of the compensation, the court shall also take into account all circumstances related to the violation, the lost benefits and the non-property damages, as well as the revenues gained by the infringer as a result of the infringement (Article 95(3)). The court shall determine fair compensation, which shall have a deterrent and warning effect on the offender and on other members of society (Article 95(4)).

In addition, Article 95b provides for “other types of claims”, which can be made in court: establishing the fact of the violation (Article 95b(1)); suspending the misuse or prohibiting the carrying out of the activity that constitutes misuse, i.e. an injunction (Article 95b(2)); seizure and destruction (Article 95b(3)); seizure of the rewriting, decoding and reproducing devices used exclusively for committing the infringements (Article 95b(4)), handing items over (Article 95b(5)); disclosure at the expense of the infringer of the operative part of the court decision in two daily periodicals and in a television organisation with a national coverage in a time zone determined by the court (Article 95b(6)).

Interim measures are also available as per Article 96a of the Copyright Law. These include, in particular: interim injunctions; seizure of works protected by copyright or by related rights (such as broadcasts, as per Article 72 and Article 91(3)) or infringing databases which it is claimed have been produced illegally, as well as the equipment used to produce these and any other relevant evidence; prevention or prohibition of the use of machines which are alleged to have been or to be about to be used to commit violations; sealing of the premises on which it is alleged that infringements are being or will be committed.

Additionally, Article 96f(1) (in Bulgarian the provision is ‘96e(1)’ of the Copyright Law) provides for the following remedies in the case of copyright infringement, which can be ordered by the Ministry of Culture: an injunction; specific measures within a specified time limit, requiring the infringer to declare that he/she will cease the infringement and if necessary a public rebuke; an order for the termination of any violation of this law and, if necessary, a requirement to make this order public.

All the aforementioned sanctions, remedies and injunctions can be invoked in cases concerning online piracy of audiovisual sports content, provided that the act in question concerns the rights held by broadcasters (as per Article 72 and Article 91(3) of the Copyright Law). As previously mentioned, the Copyright Law does not vest any rights in sports organisers. In the same way, all the provisions concerning the preservation of evidence and the right to information are applicable in cases concerning online piracy of audiovisual sports content, provided that the acts in question concern the rights held by the broadcasters.

Concerning the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive), according to Article 97(5) of the Copyright Law, the same administrative sanctions as those provided in other cases of civil law violations shall apply in the case of: the manufacture, importation, distribution, sale,



rental or possession of illicit devices for commercial purposes; the installation, maintenance or replacement for commercial purposes and use of commercial communications to promote illegal devices. These sanctions include a monetary fine of between BGN 2 000 and 20 000 for a first infringement, to be followed by the seizure of the copyrighted work from the infringer (Article 97(1)). In the case of repeated infringement within 12 months of the first infringement, a fine of between BGN 3 000 and 30 000 and a seizure of the object from the possession of the infringer may be imposed (Article 97(2)). Finally, according to Article 98d (Article 98r in the Bulgarian version) of the Copyright Law, all remaining questions not explicitly regulated in the Copyright Law are to be resolved in accordance with the Law on Administrative Offences and Penalties.

#### 6.3.3.2. National bodies with competences on copyright enforcement

According to Article 98c (Article 98b in the Bulgarian version) of the Copyright Law, the Minister of Culture or his/her delegate is the competent authority to act on copyright infringement. In the case of unauthorised retransmission of television signals, the Minister (or his/her delegates) is competent to establish the existence of the infringement. Among his/her prerogatives, the Minister (or his/her delegates) may issue injunctions under Article 96e of the Copyright Law and impose administrative sanctions, including fines, under Article 97 thereof. If, during the administrative procedure, there are indications that the infringement might constitute a criminal offence, the Minister of Culture or his/her delegate can refer the case to the Prosecutor's office.

#### 6.3.3.3. Codes of conduct and Memorandums of Understanding

There is no code of conduct or Memorandum of Understanding relating to the enforcement of intellectual property rights and the fight against online piracy adopted either by public or private entities in Bulgaria.

#### 6.3.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

There are no notice and take-down measures or procedures under the Bulgarian system. Each intermediary may establish its own ad hoc rules.

#### 6.3.3.5. Removal and blocking orders

There are no specific blocking injunctions for online piracy of audiovisual sports content, and so, general injunction provisions are applicable as an umbrella provision, but no specific conditions nor case law are available.

### 6.3.3.6. Measures against end-users

There are no specific measures against end-users in relation to online piracy of audiovisual sports content.

### 6.3.3.7. Criminal sanctions

Besides administrative sanctions applicable to civil law violations and repeated infringements under Article 97 of the Copyright Law as mentioned earlier, criminal sanctions are foreseen in Bulgarian law in cases of criminal offences. As copyright infringements fall under the Penal Code – and in particular Article 172a thereof –, the relevant procedures are to be found in the Penal Procedural Code, which applies in its entirety.

Criminal sanctions are regulated in the Penal Code, Part VII, Articles 172a to 174, which provide for criminal sanctions, including:

- imprisonment of up to five years and a fine of up to BGN 5 000 for violation of the rights listed in Article 172a(1);
- imprisonment of between two and five years and a fine of BGN 2 000 to BGN 5 000 for violation of the rights listed in Article 172a(2), save for gross violation, where imprisonment can be for terms of between two and eight years and the fine of BGN 10 000 to BGN 50 000 (Article 172a(4));
- imprisonment of one to six years and a fine of BGN 3 000 to BGN 10 000 (Article 172a(3)) for repeat offences (or acts leading to significant harmful consequences). In all cases, the infringing object is seized and destroyed (Article 172a(6));
- imprisonment of up to two years or a fine of BGN 100 to 300, as well as public rebuke (Article 173(1)) for publishing or using a work (or a substantial part thereof) without the consent of the copyright holders;
- imprisonment of up to two years and a fine of BGN 100 to BGN 300, as well as public rebuke (Article 174) for a false claim for co-authorship in a work in which one has not taken part.

**Table 26. National regulation applicable on audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No, the Law on Copyright and Neighbouring Rights and the Physical Education and Sports Act (Закон за физическото възпитание и спорта) <sup>455</sup> apply.
Specific rules on the use of sports content in social media	No

<sup>455</sup> <https://www.lex.bg/bg/laws/ldoc/2137187621>.

Specific features on sports	Description
Competent bodies (other than judicial bodies)	Yes, Ministry of Culture
Entitlement to take legal action	Yes, broadcasters and rightsholders (or their representatives)
Codes of conduct	No
Specific proceedings	No
Specific remedies	No

Source: Bulgarian response to European Audiovisual Observatory standardised survey

**Table 27. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	No
Removal and blocking injunctions	Yes
Dynamic and/or live-blocking injunctions	No
De-indexing injunctions	Not mentioned in national law; never applied
Damages and orders to cease and desist	Yes
Administrative offence and remedies	Yes
Notice and take-down procedures	No

Source: Bulgarian response to European Audiovisual Observatory standardised survey

### 6.3.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following aspects: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions in relation to online infringement of audiovisual sports content.



**Table 28. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
Communication to the public	N/A	N/A
Hosting providers' knowledge and awareness of illegal activity	N/A	N/A
Notice and take-downs	N/A	N/A
Measures against end-users	N/A	N/A
Criminal sanctions	N/A	N/A

Source: Bulgarian response to European Audiovisual Observatory standardised survey

#### 6.3.4.1. Communication to the public

The concept of communication to the public is scrutinised by the courts, but to date there has been no national case concerning online piracy of audiovisual sports content.

#### 6.3.4.2. Online infringement of audiovisual sports content

Legal action is most often initiated by broadcasters. Broadcasters, unlike sports event organisers, are protected under the Copyright Law. Furthermore, it is usual practice for sports event organisers, specifically sports federations and sports clubs, to license their rights to broadcasters instead of exercising them directly and thus legal actions are also initiated by broadcasters.

In order to individuate the person who committed the violation, there is no national case law which could provide such information. However, with regard to copyright infringement of audiovisual works, in particular movies, the court allowed the collection of personal data by private entities to identify the person committing the violation.<sup>456</sup>

Nevertheless, in this particular case, the proceedings started as criminal proceedings and the data was collected during the first part of the criminal investigation. Afterwards, it was ruled by the court that the action did not qualify as a criminal offence and the proceedings were therefore conducted according to the administrative-penal provisions of the Copyright Law.

According to the Copyright Law (Article 95f corresponding to '95e' in the Bulgarian version) when requested by the applicant, the court could oblige the defendant or a third party to provide information on circumstances relevant to the outcome of the case, which information could also include the names and addresses of producers, manufacturers,

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<sup>456</sup> Judgement of 31 May 2014, Administrative Case No. 1189/2014 of the Sofia District Court (Решение от 31.05.2014 г. по адм. д. № 1189/2014 г. на Софийски районен съд).



distributors, suppliers and other persons who had previously held the goods or services, as well as the alleged wholesale and retail distributors. A 'third party' could be anyone who provides the services which allow the infringement and also anyone who uses the infringing services.

#### 6.3.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

There is no national case law in Bulgaria which refers to the conditions needed to prove actual knowledge, as stated in Article 14 of E-Commerce Directive.

#### 6.3.4.4. Notice and take-down requirements

Concerning notice and take-down requirements, no court decisions have been detected that would address the requirements to fulfil a notification procedure for copyright infringement.

#### 6.3.4.5. Removal and blocking orders

Bulgarian courts have not applied any removal or blocking orders for copyright law infringement.

#### 6.3.4.6. Measures against end-users ordered by the courts

There are no cases related to the application of measures against end-users such as suspending or blocking internet access.

#### 6.3.4.7. Compensation criteria adopted by the courts

According to the established case law of the administrative courts with regard to unauthorised cable retransmission of the programmes of radio and television organisations, the courts usually apply financial sanctions as a remedy. The limits of those sanctions are established in the Copyright Law.

For example, in a judgement of 31 May 2014, the Sofia District Court ruled that:

*The Bulgarian legislator established a number of measures, which are graded according to the impact of the infringement. The basic principle when determining the sanctions,*



*enshrined in both national law and European law, is that the sanctions should correspond to the gravity of the crime committed.*<sup>457</sup>

#### 6.3.4.8. Criminal sanctions ordered by the courts

As yet, courts have not applied any criminal sanctions to cases of online infringement of audiovisual sports content.

### 6.3.5. Reports and studies

In 2014 the Office of the United States Trade Representative (USTR) published a Special 301 Report addressing online piracy of protected content in Bulgaria. The report, entitled “Special report 301 for the protection of copyright and its application”, was released by an organisation called the Bulgarian International Alliance for Intellectual Property (MAIS) (*България Международен Алианс за Интелектуална Собственост (МАИС) – Специален Доклад 301 за Защита На Авторското Право И Правоприлагане 2014 г.*).

No other reports or studies dealing specifically with the issue of illegal online transmission of sports events have been detected and, in general, there is no trace of reliable sources regarding the technologies and business models used for the illegal streaming of sports content.

Furthermore, no specific awareness campaigns in relation to sports events have been conducted in recent years. In terms of awareness-raising, the initiative “GLAMs<sup>458</sup> to Fix Copyright: Preparing GLAMs for the Copyright Reform in Bulgaria” was organised by Creative Commons Bulgaria in collaboration with the Digital Republic Association and supported by the Creative Commons Global Network Copyright Platform Activity Fund.

Concerning the existence of associations of broadcasters or rightsholders, there are two associations which actively work to address the copyright issues of broadcasting organisations and may deal with online piracy of audiovisual sports content in Bulgaria. The first is the Association of Bulgarian Radio and Television Broadcasters (ABBRO), a non-profit, non-governmental organisation. ABBRO aims to support and facilitate the development of commercial media services, as well as to protect the professional interests of its members. In order to achieve its goals, ABBRO represents its members before Bulgarian and foreign authorities, legislators and sector regulators, international organisations, collective management organisations, non-governmental organisations and other entities.<sup>459</sup>

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<sup>457</sup> Judgement of 31 May 2014, administrative Case No. 1189/2014 of the Sofia District Court (Решение от 31.05.2014 г. по адм. д. № 1189/2014 г. на Софийски районен съд).

<sup>458</sup> GLAM stands for ‘galleries, libraries, archives and museums’.

<sup>459</sup> <https://www.abbro-bg.org/en/>.

The second association is the Bulgarian Association of Cable and Communication Operators (BACCO), an association of national telecommunications entities. BACCO actively participates in legislative initiatives, public discussions, working groups and advisory councils in the field of electronic communications, media law, copyright and all areas affecting the activities of members.<sup>460</sup>

### 6.3.6. Data compilation

This country report is based on data compiled by Alina Trapova, PhD candidate in Legal Studies and Veronika Dimova, LL.M., Attorney-at-Law.

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<sup>460</sup> <http://bacco.bg>.



## 6.3.7. Annex

**Table 29. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive 98/84/EC</b>	Law on Copyright and Neighbouring Rights ( <i>Закон за авторското право и сродните му права</i> (ЗАПСП) (also, “the Copyright Law”)
<b>Article 5 of Conditional Access Directive 98/84/EC – Sanctions and remedies</b>	Article 97 – the Copyright Law Article 96(f)(1) and Article 96 (e)(1)
<b>InfoSoc Directive 2001/29/EC</b>	The Copyright Law
<b>Article 6 InfoSoc – Obligations as to technological measures</b>	Article 25 (free use of certain copyright works – removal, damages, destruction or disruption of technical means)
<b>Article 8 InfoSoc – Sanctions and remedies</b>	Articles 95-96-97 of the Copyright Law
<b>IPRED 2004/48/EC</b>	The Copyright Law The Penal Code (as amended up to 22 December 2020) ( <i>Наказателен кодекс</i> (НК) Measures for the Protection of Intellectual Property Rights ( <i>Наредба за граничните мерки за защита на права върху интелектуална собственост</i> ).
<b>Article 6 IPRED – Evidence</b>	Article 95e (in Bulgarian that is: ‘95д’) of the Copyright Law
<b>Article 7 IPRED – Measures for preserving evidence</b>	Article 95e (in Bulgarian that is: ‘95д’) of the Copyright Law
<b>Article 8 IPRED – Right of information</b>	Article 95f (in Bulgarian that is: ‘95е’) of the Copyright Law
<b>Article 9 IPRED – Provisional and precautionary measures</b>	Article 96a of the Copyright Law
<b>Article 10 IPRED – Corrective measures</b>	Article 95b(1)(3)–(4) and Article 95b(2) of the Copyright Law
<b>Article 11 IPRED – Injunctions</b>	Article 95b (1)(2) of the Copyright Law
<b>Article 12 IPRED – Alternative measures</b>	Not transposed (not mandatory)
<b>Article 13 IPRED – Damages</b>	–
<b>Article 14 IPRED – Legal costs</b>	Article 95
<b>E-Commerce Directive 2000/31/EC</b>	Electronic Commerce Act (as amended at 10 November 2020) ( <i>Закон за електронната търговия</i> ) <sup>461</sup>
<b>Article 12-15 of the E-Commerce Directive</b>	Chapter Four of the Electronic Commerce Act – Articles

<sup>461</sup> <https://lex.bg/en/laws/ldoc/2135530547>.



EU directives	National law
	14 to 17
<b>Article 16-20 of the E-Commerce Directive</b>	Chapter Six, Seven, Seven (A) of the Electronic Commerce Act
<b>DSM Directive EU 2019/790</b>	Directive 2019/790 has not been transposed as at May 2021.



## 6.4. CY – Cyprus – National legal summary<sup>462</sup>

### 6.4.1. General legal framework

#### 6.4.1.1. National legislation on copyright<sup>463</sup>

In Cyprus, Law 59/1976 on Copyright and Neighbouring Rights, as last amended (*Ο περί του Δικαιώματος Πνευματικής Ιδιοκτησίας και Συγγενικών Δικαιωμάτων Νόμος του*, the Copyright Law) is the general act that regulates the scope and the enforcement of copyright and related rights.<sup>464</sup>

Other laws are relevant in relation to copyright enforcement, as follows:

- Law 24(III)/2002 on the Legal Protection of Services (*Ο περί της Σύμβασης για τη νομική προστασία των υπηρεσιών που βασίζονται ή συνίστανται στην παροχή παροχών υπό όρους* (Κυρωτικός) Νόμος του 2002)<sup>465</sup>
- Law 156 (I)/2004 on Electronic Communication (*Ο Περί Ορισμένων Πτυχών των Υπηρεσιών της Κοινωνίας της Πληροφορίας και ειδικά του Ηλεκτρονικού Εμπορίου καθώς και για Συναφή Θέματα Νόμος του*)<sup>466</sup>
- Law 123(I)/2006 incorporated into Law 59/1976 deals with the Protection of Intellectual Property.

In Cyprus, copyright infringement is considered both a criminal offence and a civil law violation, according to Articles 13 and 14 of Law 59/1976.

National legislation does not differentiate the crimes and damages/sanctions according to whether or not the infringer was acting for profit. The only reference to infringement on a commercial scale can be found in Article 13 B of Law 59/1976, which transposed Article 8 of the Intellectual Property Rights Enforcement Directive (IPRED) verbatim (right of information).

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<sup>462</sup> The country report on Cyprus incorporates the feedback received from Lisa Ioannou (Cyprus Ministry of Energy, Commerce and Industry) during the checking round with the national competent institutions.

<sup>463</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>464</sup> [https://wipolex.wipo.int/en/legislation/details/920\\_](https://wipolex.wipo.int/en/legislation/details/920_)

<sup>465</sup> [http://www.cylaw.org/nomoi/arith/2002\\_3\\_024.pdf](http://www.cylaw.org/nomoi/arith/2002_3_024.pdf)

<sup>466</sup> [http://www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_156/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_156/full.html)



#### 6.4.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>467</sup> has not been transposed to date (as at May 2021). Two drafts of the implementing law were released for public consultation in July and November 2020. The final draft will be prepared by the Office of the General Attorney, but the whole process is still pending.

**Table 30. Regulatory framework**

EU directive	National law
DSM Directive	N/A
Intellectual Property Rights Enforcement Directive (IPRED)	Law 123(I)/2006, incorporated into Law 59/1976 on copyright and related rights
Information Society (InfoSoc) Directive	Law 59/1976 on copyright and related rights
E-Commerce Directive	Law 156 (I) 2004 on electronic communications
Conditional Access Directive	Articles 4 and 5 implemented in Law 24(III)/2002 ratifying the European Convention on the Legal Protection of Services <sup>468</sup>

Source: Cypriot response to European Audiovisual Observatory standardised survey

### 6.4.2. National rules applicable to audiovisual sports content

#### 6.4.2.1. Legal definitions of “broadcaster” and “sports event organiser”

Under Cypriot law, according to Article 2 of Law 59/1976, an “audiovisual organisation” means a radio or television broadcasting organisation operating in accordance with the

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<sup>467</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

<sup>468</sup> Law 24(III)/2002 (Articles 4 and 5), ratifying the European Convention on the Legal Protection of Services, [http://www.cylaw.org/nomoi/arith/2002\\_3\\_024.pdf](http://www.cylaw.org/nomoi/arith/2002_3_024.pdf)



Law on Radio and Television Broadcasting Organisations (7(I)/1998),<sup>469</sup> which broadcasts and/or rebroadcasts programmes by wireless or cable means.

Furthermore, Article 1 of the Law on Radio and Television Broadcasting Organisations provides for the definitions of an “audiovisual service” and an “audiovisual service provider”.

An “audiovisual service” is defined under Article 1 thereof (in accordance with Articles 56 and 57 of the Treaty on the Functioning of the European Union) as a service which is under the editorial responsibility of an audiovisual service provider, whose main purpose is to provide information, entertainment or education of the general public through electronic communications networks. An “audiovisual service provider” means the natural or legal person who has the editorial responsibility for the selection of the audiovisual content of the audiovisual service and who determines how it is organised.

There is no legal definition of “sports event” or (sports event) “organiser” in Cypriot law.

#### 6.4.2.2. Legal protection related to sports events

There is no specific legal protection for sports event organisers in Cypriot law. Sports event organisers, as owners or exclusive users of a stadium, have exclusivity of access to the sport venue, based on the property rights related to the stadium or on a contractual agreement with the owner of the stadium. On the basis of this exclusivity, they give the broadcaster the right to broadcast the event through a contractual agreement.

Article 10 of Law 59/1976 provides for the exclusive rights granted to broadcasters over their broadcasts, as follows:

*10.-(1) Copyright in a broadcast shall be the exclusive right to control the performance in the Republic of any of the following acts: (a) the recording or the reproduction and rebroadcasting in any way of the whole or a substantial part thereof; (b) the transmission or retransmission to the public in a place where an admission fee is charged, of the whole broadcast or a substantial part thereof, either in its original form or in any form recognizably derived from the original; (c) the fixation of the broadcast, regardless of whether the broadcast is transmitted by wire or by wireless means, including cable or satellite transmission. The beneficiary shall not have this right when he merely broadcasts through a cable broadcast of another beneficiary; (d) the rental and lending of the fixations of the broadcast; (e) the distribution of the fixations of the broadcast; (f) the taking of photographs from the broadcast. 2) The provisions of paragraphs (a), (e), (k) and (m) of subsection (2) of section 7 shall apply to the copyright in a broadcast in like manner as they apply to copyright in a literary, musical or artistic work or in a film. (3) The*

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<sup>469</sup> Law on Radio and Television Broadcasting Organisations 1998 (7(I)/1998) (Ο περί ραδιοφωνικών και τηλεοπτικών οργανισμών νόμος του), [http://www.cylaw.org/nomoi/enop/non-ind/1998\\_1\\_7/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1998_1_7/full.html).





*contract of an audiovisual or television broadcast, if there is no agreement to the contrary, does not give the counterparty broadcasting organisation the authority to allow third parties to transmit or retransmit the work to the public via electromagnetic waves or material conductors or in any other way, parallel to the surface of the earth or through satellites.*

In case of a fixation/recording of the event, the producer of the recording also enjoys his/her own copyright (entrepreneurial copyright as in the UK) over the recording (film) (no originality needed). In fact, according to Article 2 of Law 59/1976, the “author”, in the case of a film, means the person who undertook the production of the recording or first fixation of the film on a carrier.<sup>470</sup>

In the case of infringement of broadcasting or online transmission of a sports event, broadcasters are entitled to take legal action with regards to their rights, based on Article 10 of Law 59/1976. Other rightsholders would also be entitled to take legal action for the elements of the sports event which would qualify as a work (music, anthem, images, logos, etc.), while regarding events which have been fixed/recorded and are transmitted online, the producer of the film (recording of the event) would also be entitled to take legal action (Article 2 of Law 59/1976).

Sports events organisers can also be entitled, on the ground of property law (unauthorised entrance and stay in their premises) and contract law (regarding the breach of contractual obligations/terms of access to the premises), to take legal actions in relation to the infringement of broadcasting or online transmission of a sports event if the unauthorised recording and/or transmission takes place in their premises.

#### 6.4.2.3. Other specific rules applicable to sports events

There is no other specific legal protection for sports event organisers in Cypriot law. In addition, no specific rules are provided concerning the use of sports content in social media.

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<sup>470</sup> The producer of the recording (film) is referred to as an “author” in the law, since he/she enjoys entrepreneurial copyright over the recording (film). In practice, the author of the recording and the film producer are the same person. The law uses the term “author” and not “producer”. In substance this right is a related right but the law considers it as copyright. This is why no originality is required. Other authors, such as the author of music, enjoy copyright on their work and they could take legal action too.

**Table 31. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
Broadcaster	Yes	Related rights
Sports event organiser	No	Exclusive rights related to access to the sports venue (give authorisations for broadcasting through contractual agreements based on that exclusivity)

Source: Cypriot response to European Audiovisual Observatory standardised survey

### 6.4.3. Remedies and sanctions applicable in the event of infringement

#### 6.4.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

All civil law sanctions and remedies, which are provided in Article 13(5) of Law 59/1976, can be invoked in any action for copyright infringement, including in the event of online piracy of audiovisual sports content. These include damages; injunctions; accounts for profit<sup>471</sup> or otherwise; injunctions against the intermediaries, whose services are being used by a third party to infringe copyright. No specific procedure is provided in the law for copyright infringement and the relevant legal mechanism is the granting of Anton Piller<sup>472</sup> orders (i.e. an “interim order”, or temporary injunction, Article 7 IPRED) on the basis of Article 32 of the Law on Courts, as confirmed by case law.<sup>473</sup>

Article 13 C of Law 59/1976 provides that a court which finds an infringement of copyright, may order the infringer to refrain from repeating said infringement in the future. In the event of non-compliance with this prohibition, the court may, to safeguard compliance, impose a fine which does not exceed CYP 35 000 or imprisonment which does not exceed three years or both such penalties.

<sup>471</sup> “Account of profit”: as the profit made by the defendant is seldom equivalent to the plaintiff’s loss, some jurisdictions allow a claimant to claim the infringer’s gain by means of an account of profits. But the plaintiff has to establish that profits were made by the defendant knowing that he/she was infringing.

<sup>472</sup> The order is named after the 1975 English case of *Anton Piller KG v. Manufacturing Processes Limited*, dealing with the theft of trade secrets, *Anton Piller KG v. Manufacturing Processes Ltd & Ors* [1975] EWCA Civ 12 [1976] 1 All ER 779 (8 December 1975). It is a court order that provides the right to search premises and seize evidence without prior warning. This is intended to prevent the destruction of relevant evidence, particularly in cases of alleged trademark, copyright or patent infringements.

<sup>473</sup> See for example Supreme Court, 14 July 2013 (Civil Appeals 10/2011 and 11/2011); Supreme Court, *Lacoste v. D & L Tourist Enterprises Limited* ECLI:CY:EDAM:2014:A18



Concerning the protection of technological measures and rights management information (Articles 6–7 of the InfoSoc Directive), Article 14B of Law 59/1976 lists the prohibited acts enabling the circumvention of effective technical devices, subject to sanctions and remedies under Articles 4 and 5 of Law 24(III)/2002.<sup>474</sup> This law ratified the European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access (hereinafter, the “Conditional Access Convention”). It provides both for criminal sanctions (imprisonment for a term not exceeding twelve months or a fine not exceeding CYP 1 000 or both, and the court may additionally order the seizure of any device in connection with which the offence was committed and any other gain resulting from the commission of the offence) and for all remedies provided in civil trials for civil wrongs. Sanctions and remedies can be directly invoked in cases concerning online piracy of audiovisual sports content with the use of illicit devices.

#### 6.4.3.2. National bodies with competences on copyright enforcement

There is no national authority (e.g. administrative body) other than judicial bodies with specific competences to address copyright infringements in Cyprus.

#### 6.4.3.3. Codes of conduct and Memorandums of Understanding

No code of conduct or Memorandum of Understanding relating to the enforcement of intellectual property rights and the fight against online piracy has been adopted either by public and/or private entities in Cyprus.

#### 6.4.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

Articles 12–15 of the E-Commerce Directive were transposed verbatim into Articles 15, 16 and 17 of Law 156 (I) 2004, which provides that the intermediaries’ liability exemption regime established by the E-Commerce Directive does not affect the possibility for a court or administrative authority to impose appropriate measures on a service provider to terminate or prevent an infringement.

While it is possible to send a notice to the hosting provider, there is no specific regulation or guidance (such as best practice) regarding notice and take-down measures.

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<sup>474</sup> Ο περί της Σύμβασης για τη νομική προστασία των υπηρεσιών που βασίζονται ή συνίστανται στην παροχή πρόσβασης υπό όρους (Κυρωτικός) Νόμος του 2002 (24(III)/2002), [http://www.cylaw.org/nomoi/arith/2002\\_3\\_024.pdf](http://www.cylaw.org/nomoi/arith/2002_3_024.pdf)



#### 6.4.3.5. Removal and blocking orders

In the case of online copyright infringement, Article 13(5) of Law 59/1976, which transposes Article 8(3) of the InfoSoc Directive, allows the court to issue injunctions against intermediaries whose services are being used by a third party to infringe copyright. However, as no specific procedure is provided (unlike, for example, in the case of online betting and child abuse/child pornography), the provisions of general civil procedure law for injunctions apply.

In the absence of any specific legislation on the topic, a general power of the court in civil proceedings to issue interim orders (injunctions) could be used, based on Article 32 of the Courts of Justice Law No. 14/60, which gives the court general authority and discretion to grant injunctions where it considers it justified in the circumstances of the case.<sup>475</sup>

In theory, Article 32 of the Courts of Justice Law could also be invoked in combination with Article 13(5) of Act 59/1976 in relation to online piracy of live sports events. However, the length of the procedure would undermine the effectiveness of this measure, as the provisions of civil procedure law do not allow for a quick reaction (such as blocking) in such a case of live piracy.

#### 6.4.3.6. Measures against end-users

Under Cypriot law, no specific measure against end-users is provided. Theoretically, Article 32 of the Courts of Justice Law could be invoked in combination with Article 13(5) of Law 59/1976 (as previously mentioned), as well as criminal procedures where criminal activity is suspected (including copyright infringement for parts or elements of the sports event protected by copyright law) on the grounds of Articles 27 and 28 and of the Law on Criminal Procedure. However, Cypriot courts have not applied such measures against end-users.

Furthermore, on the basis of Article 17 of the Constitution of the Republic of Cyprus,<sup>476</sup> lifting the secrecy/confidentiality of communications is possible only for serious crimes. It is not possible to lift the secrecy/confidentiality of communications (specifically the confidentiality of the infringer's Internet Protocol (IP) address) in Cyprus in the case of copyright law infringement. Therefore, it is not possible to connect a specific IP address to a person for the identification of this person and to start proceedings for copyright law infringement if the sole element that can reveal the identity of the defendant is the IP address used for the infringement.

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<sup>475</sup> See, *Demades Overseas Ltd v. Studio Mast Ltd* – Civil appeal no 9636 and 9637; *Parico Aluminium Designs Ltd v. Muskita Aluminium Co. Ltd* (2002) 1 AAD 2015

<sup>476</sup> Constitution of the Republic of Cyprus (*Το Σύνταγμα της Κυπριακής Δημοκρατίας*, <http://www.cylaw.org/nomoi/enop/ind/syntagma/section-sc3c3bc52c-4568-070e-d908-0b2e5b3e6a13.html>).

#### 6.4.3.7. Criminal sanctions

Criminal procedures can be initiated (warrant for search of premises) where criminal activity is suspected (including copyright infringement for parts or elements of a sports event protected by copyright law) on the grounds of Articles 27 and 28 and of the Law on Criminal Procedure (*Ο περί Ποινικής Δικονομίας Νόμος (ΚΕΦ.155)*).<sup>477</sup> Cypriot courts, however, scrutinise the terms under which such warrants are granted. This possibility was only used once by a court in 2018 in a case concerning the unauthorised sharing of encrypted signals transmitting live sports events.<sup>478</sup> However, the granting of a search warrant was annulled for lack of sufficient evidence to prove that the physical premises concerned by the search were used for any illegal activity.

As regards criminal sanctions, in accordance with Article 14(3) of Law 59/1976, these are only applicable if scientific, literary, artistic or musical works or films are communicated to the public without authorisation. Consequently, criminal sanctions could be imposed only regarding parts or elements of the recording or broadcast of a sports event that could, independently of the event, qualify as original works (anthems, songs, etc.) and could be considered as a film and be protected by the film producers' copyright (for example, in the case of audiovisual sports content, any post-fixation touches that might be deemed as conferring originality to the audiovisual recording). Criminal sanctions would thus not be available for the infringement of the related (or "neighbouring") rights of broadcasting organisations.

Under Article 14 (3), criminal sanctions provide for a fine not exceeding CYP 30 000 or imprisonment for a term not exceeding three years, or both, and, in the case of a second or subsequent conviction, a fine not exceeding CYP 35 000 or imprisonment for a term not exceeding four years, or both.

**Table 32. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
<b>Specific rules on sports content copyright</b>	No, national copyright law is applied
<b>Specific rules on the use of sports content in social media</b>	No
<b>Specific competent bodies (other than judicial bodies)</b>	No (the Copyright and Related Rights Authority has no competences in ordering or judging on copyright infringement.)

<sup>477</sup> [http://www.cylaw.org/nomoi/enop/non-ind/0\\_155/index.html](http://www.cylaw.org/nomoi/enop/non-ind/0_155/index.html)

<sup>478</sup> Case No. 102/2018. For further details, please refer to section 6.4.4. of this country report.



<b>Entitlement to take legal action</b>	Yes, broadcasters (Article 10 of Law 59/1976); the producer of the recording (film) where a recording has taken place
<b>Codes of conduct</b>	No
<b>Specific proceedings</b>	No
<b>Specific remedies</b>	No

Source: Cypriot response to European Audiovisual Observatory standardised survey

**Table 33. National remedies in the case of copyright infringement**

<b>Typology</b>	<b>Description</b>
<b>Criminal prosecution and criminal sanctions</b>	Only for parts of the recording/broadcasting of a sports event qualifying as original work or for the recorded event considered as a film and protected by the film producers' copyright
<b>Differentiation of criminal sanctions based on acting for profit</b>	No
<b>Removal and blocking injunctions</b>	Yes
<b>Dynamic and/or live blocking injunctions</b>	Not mentioned in national law; never applied
<b>De-indexing injunctions</b>	Not mentioned in national law; never applied
<b>Damages and orders to cease and desist</b>	Yes
<b>Administrative offence and remedies</b>	Not relevant for online copyright infringement
<b>Notice and take-down procedures</b>	Yes

Source: Cypriot response to European Audiovisual Observatory standardised survey

#### 6.4.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions in relation to online infringement of audiovisual sports content.

**Table 34. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
Communication to the public	N/A	N/A
Hosting providers' knowledge and awareness of illegal activity	N/A	N/A
Notice and take-downs	N/A	N/A
Measures against end-users	Unauthorised sharing via streaming – no measures applied	No. 102/2018
Criminal sanctions	N/A	N/A

Source: Cypriot response to European Audiovisual Observatory standardised survey

#### 6.4.4.1. Communication to the public

In Cyprus, there is no case law related to the notion of communication to the public and copyright infringement of audiovisual sports content.

#### 6.4.4.2. Online infringement of audiovisual sports content

No relevant national case law concerning online piracy of audiovisual sports content was detected in Cyprus. Furthermore, no legal actions initiated by sports event organisers or by broadcasters have been reported.

#### 6.4.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

In Cyprus, no case law was reported that would concern the condition of actual “knowledge” of illegal activity or awareness on the part of hosting providers, as stipulated under Article 14 of the E-Commerce Directive.

#### 6.4.4.4. Notice and take-down requirements

As mentioned above, while it is possible to send a notice to the hosting provider, there is no specific regulation or guidance (such as best practice) regarding notice and take-down measures in Cyprus.



#### 6.4.4.5. Removal and blocking orders

Courts are not used to applying removal or blocking orders for illegal content and therefore no relevant precedents have been detected. Only special procedures apply for online betting and child abuse/child pornography content.

#### 6.4.4.6. Measures against end-users ordered by the courts

Law 59/1976 does not provide for any measures against end-users and for that reason, courts do not usually adopt orders or measures of this type.

Criminal procedures could in theory also be initiated (warrant for search of premises) where criminal activity is suspected (including copyright infringement for parts or elements of the sports event protected by copyright law). Cypriot courts, however, scrutinise the terms under which such warrants are granted.

An example of the fact that there is no application of measures against end-users ordered by courts is illustrated in Case No. 102/2018, which concerned the unauthorised sharing via streaming of encrypted signals transmitting live sports events. The police requested the issuance of a search warrant in order to locate and seize computers and other means of storage of electronic data, decoders or other means of coding/decoding satellite signals, signal transmitters, signal transmission or any other apparatus or instrument relating to the offences under investigation or documents relating to the offences in question.<sup>479</sup> The application for a search warrant was dismissed for lack of sufficient evidence to prove that the physical premises concerned by the search were used for any illegal activity.

#### 6.4.4.7. Compensation criteria adopted by the courts

No compensation criteria are applied by the courts in order to compute damages to sports events broadcasters.

#### 6.4.4.8. Criminal sanctions ordered by the courts

Courts do not apply any criminal sanctions for online piracy of audiovisual sports content.

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<sup>479</sup> ECLI:CY:AD:2019:D415, [http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_1/2019/1-201910-102-18PolAit.htm&qstring=%E1%E8%EB%E7%F4%E9%EA%2A%20and%20%EC%E5%F4%E1%E4%EF%F3%2A](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2019/1-201910-102-18PolAit.htm&qstring=%E1%E8%EB%E7%F4%E9%EA%2A%20and%20%EC%E5%F4%E1%E4%EF%F3%2A)



## 6.4.5. Reports and studies

In Cyprus, no reports or studies have been detected about online piracy of protected content, which would also address the specific issue of illegal online transmission of sports events. Furthermore, there are no studies describing the legal offer of online sports content in Cyprus.

Some general awareness campaigns were conducted in Cyprus in relation to copyright infringement, although these were not specifically directed at online piracy of sports events.

In addition, there are no associations of broadcasters or rights holders that actively work to address the issue of online piracy of audiovisual sports content in Cyprus.

## 6.4.6. Data compilation

This country report is based on data compiled by Tatiana Eleni Synodinou, an associate professor at the University of Cyprus (Law Department), a national expert for many projects and EU studies, member and President of the Union of Copyright Law of Cyprus (EDPI) and Cypriot affiliate of the International Literary and Artistic Association (ALAI).



## 6.4.7. Annex

**Table 35. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive (98/84/EC)</b>	Transposed partly (sanctions and remedies) in Articles 4 and 5 of Law 24(III)/2002 ratifying the European Convention on the Legal Protection of Services <sup>480</sup>
<b>InfoSoc Directive 2001/29/EC</b>	Law 59/1976 <sup>481</sup>
<b>Article 6 InfoSoc – Obligations as to technological measures</b>	<p>Article 14b of Law 59/1976</p> <p>The most significant deviation is that Article 6(1) has not been transposed.</p> <p>The law provides for a prohibition of commercial dealings in circumvention devices.</p> <p>Article 14b (14 B) only adopted Article 6(2) InfoSoc as a criminal provision.</p> <p>Regarding the transposition of Article 6(4) InfoSoc, Cypriot law provides for immediate access to courts for the resolving of disputes between rights holders. However, no specific procedure is provided.</p>
<b>Article 8 InfoSoc – Sanctions and remedies</b>	Article 13 of Law 59/1976 – Article 13 (5)
<b>IPRED 2004/48/EC</b>	Law 59/1976 incorporated into Law 123(I)/2006. Also, general civil procedure law provisions are applicable
<b>Article 6 IPRED – Evidence</b>	Article 13A of Law 59/1976
<b>Article 8 IPRED – Right of information</b>	Article 13B of Law 59/1976
<b>Article 10 IPRED – Corrective measures</b>	<p>Article 13(5) of Law 59/1976</p> <p>Article 13C (13 (r)) of Law 59/1976</p>
<b>Article 11 IPRED – Injunctions</b>	<p>Article 13(5) of Law 59/1976</p> <p>Article 13C (13 (r)) of Law 59/1976,</p>
<b>Article 15 IPRED – Publication of judicial decisions</b>	Article 13C (2) (13 (r) (2) of Law 59/1976
<b>E- Commerce Directive 2000/31/EC</b>	Law 156 (I) 2004 on Electronic Communications <sup>482</sup>
<b>Articles 12/13/14 and 15 E-Commerce Directive</b>	Sections 15, 16, 17 and 18 of Law 156 (I) 2004 on Electronic Communications
<b>Articles 16–20 E-Commerce Directive</b>	Article 19, 20, 21, 22 and 23 of Law 156 (I) 2004

<sup>480</sup> [http://www.cylaw.org/nomoi/arith/2002\\_3\\_024.pdf](http://www.cylaw.org/nomoi/arith/2002_3_024.pdf)

<sup>481</sup> <https://wipolex.wipo.int/en/legislation/details/920>.

<sup>482</sup> [http://www.cylaw.org/nomoi/enop/non-ind/2004\\_1\\_156/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2004_1_156/full.html)



EU directives	National law
DSM Directive EU 2019/790 <sup>485</sup>	Not transposed (as at May 2021).

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<sup>485</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>

## 6.5. CZ – Czech Republic – National legal summary<sup>484</sup>

### 6.5.1. General legal framework

#### 6.5.1.1. National legislation on copyright<sup>485</sup>

In the Czech Republic, the enforcement of copyright and related rights is regulated both by private and public law.<sup>486</sup>

The basic regulatory framework for private law copyright enforcement is provided by:

- The Copyright Act (CA) – Act No. 121/2000 Coll., on Copyright and Related Rights and on the Amendment of Certain Other Acts (*zákon o právu autorském, o právech souvisejících s právem autorským a o změně některých zákonů*).<sup>487</sup> In particular, Section 40 of the CA regulates the remedies and injunctions available to the rightsholder. The CA also lays down specific rules for determining the amount of damages/unjust enrichment claimed
- The Civil Code (CC) – Act No. 89/2012 Coll. (*Zákon č. 89/2012 Sb., občanský zákoník, ve znění pozdějších předpisů*)<sup>488</sup> regulates claims for damages (section 2894 et seq. CC) and unjust enrichment in general (section 2991 et seq. CC).

Procedurally, enforcement before the courts in civil litigation is grounded in the Civil Procedure Code (CPC). It is also possible to enforce copyright by administrative or criminal means. The respective administrative offences are regulated in section 105a, 105b CA. Procedurally, regulation is provided in the Administrative Offences Act (AOA). Furthermore, Customs may act in enforcement of copyright, based on the competence set out in Act 355/2014 Coll. on the Scope of the Customs Administration of the Czech Republic in Connection with the Enforcement of Intellectual Property Rights.

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<sup>484</sup> The country report on the Czech Republic incorporates the feedback received from Adéla Faladová (Ministry of Culture) during the checking round with the national competent institutions.

<sup>485</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>486</sup> English translations of CA, CPC, PC, PPC quoted (and if necessary adapted) below in the text stem, however, from the Legal Information System ASPI, Wolters Kluwer ČR, 2021.

<sup>487</sup> Act No. 121/2000 Coll. on Copyright and Related Rights and on the Amendment of Certain Other Acts (*zákon o právu autorském, o právech souvisejících s právem autorským a o změně některých zákonů*), <https://www.wipo.int/edocs/lexdocs/laws/en/cz/cz043en.pdf>

<sup>488</sup> Act No. 89/2012 Coll. (*Zákon č. 89/2012 Sb., občanský zákoník, ve znění pozdějších předpisů*) <https://obcanskyzakonik.justice.cz/images/pdf/Civil-Code.pdf>

On the other hand, the regulatory framework for criminal enforcement of copyright is provided by:

- The Penal Code (PC) – Act. No. 40/2009 Coll. (*Zákon č. 40/2009 Sb., trestní zákoník, ve znění pozdějších předpisů*)<sup>489</sup> and
- The Penal Procedure Code (PPC) – Act No. 141/1961 Coll. (*Zákon č. 141/1961 Sb., o trestním řízení soudním (trestní řád)*).

From the public law perspective, intellectual property is understood as an (intangible) property and therefore enjoys protection within the framework of the fundamental right to property (Articles 11 and 34 of the Charter of Fundamental Rights and Freedoms – Constitutional Act 2/1993 Coll. – *usnesení předsednictva České národní rady o vyhlášení Listiny základních práv a svobod jako součásti ústavního pořádku České republiky*).<sup>490</sup>

In the Czech Republic, copyright infringement can be considered both a criminal offence and a civil law violation (and also an administrative offence). However, it is generally considered as a civil law violation – civil delict. In fact, although grievous cases of copyright infringement are punishable as a criminal offence under section 270 PC, criminal law enforcement of copyright is considered the *ultima ratio*, as noted by the Constitutional Court.<sup>491</sup> Also, the principle of subsidiarity of criminal repression applies, as expressed, *inter alia*, in section 12 PC, which provides that criminal liability and punishment may only be applied in socially harmful cases where the application of liability under another legal regulation is insufficient.

Nevertheless, the legislative construction of section 270 PC as a “blanket norm” (i.e. a norm with general application),<sup>492</sup> indicates that actual copyright infringement must be assessed against the framework of the CA.

Criminal law and civil law also interact, *inter alia*, in the issues of obligation to pay damages or immaterial damages in monetary terms or in the surrender of unjust enrichment.

In light of section 270 PC, none of the criminal offences provided for would require the infringer to act for profit in order for the action to be qualified as a crime. Acting for profit, though, could lead to qualification of the infringement within section 270(2) PC (i.e. the infringing act shows signs of commercial activity or other commerce; or

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<sup>489</sup> Act. No. 40/2009 Coll. (*Zákon č. 40/2009 Sb., trestní zákoník, ve znění pozdějších předpisů*), <http://www.ejtn.eu/PageFiles/6533/Criminal%20Code%20of%20the%20Czech%20Republic.pdf>.

<sup>490</sup> Constitutional Act 2/1993 Coll. (*usnesení předsednictva České národní rady o vyhlášení Listiny základních práv a svobod jako součásti ústavního pořádku České republiky*): [https://www.usoud.cz/fileadmin/user\\_upload/ustavni\\_soud\\_www/Pravni\\_uprava/AJ/Listina\\_English\\_version.pdf](https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/AJ/Listina_English_version.pdf).

<sup>491</sup> Constitutional Court, 1 October 2006, I. ÚS 69/06.

<sup>492</sup> Šámal P. § 270, in Šámal P. and Kratochvíl V. (eds) *Trestní zákoník: komentář*. II: § 140-421. 2. vyd. Beck C. H. (2012), p. 2737.



it procures substantial benefit to the offender or another person or caused substantial damages to another person; or it was committed on a large scale). The amount of benefit obtained by the offender is also referred to for the calculation of damages, pursuant to Article 138(1) PC.

### 6.5.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>493</sup> has not been transposed to date (as at October 2021). A draft is currently awaiting parliamentary scrutiny. The governmental comment procedure was concluded on 8 December 2020. The next steps include the Chamber of Deputies and Senate legislative procedure and the presidential signature.

**Table 36. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	N/A
<b>The Intellectual Property Rights Enforcement Directive (IPRED)</b>	Copyright Act (CA) – Act No. 121/2000 Coll., on Copyright and Related Rights and on the Amendment of Certain Other Acts ( <i>zákon o právu autorském, o právech souvisejících s právem autorským a o změně některých zákonů</i> ) <sup>494</sup>  Civil Procedure Code (CPC) – Act No. 99/1963 Coll. ( <i>občanský soudní řád</i> ) <sup>495</sup>
<b>The Information Society (InfoSoc) Directive</b>	Copyright Act (CA)
<b>E-Commerce Directive</b>	ISSPA – Information Society Service Provider Act – Act 480/2004 Coll., on certain information society services and on the amendment to certain other acts ( <i>Zákon č. 480/2004 Sb., o některých službách informační společnosti a o změně některých zákonů, ve znění pozdějších předpisů</i> ) <sup>496</sup>
<b>Conditional Access Directive</b>	Conditional Access Services Act (CASA) – Act. No. 206/2005 Coll. – ( <i>Zákon č. 206/2005 Sb., zákon o ochraně některých služeb v oblasti rozhlasového a televizního vysílání a služeb informační společnosti</i> ) <sup>497</sup>

Source: Czech response to European Audiovisual Observatory standardised survey

<sup>493</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

<sup>494</sup> <https://www.wipo.int/edocs/lexdocs/laws/en/cz/cz043en.pdf>

<sup>495</sup> [https://is.muni.cz/el/1422/jaro2008/SOC026/um/99-1963\\_EN.pdf](https://is.muni.cz/el/1422/jaro2008/SOC026/um/99-1963_EN.pdf)

<sup>496</sup> [http://documentostics.com/component/option.com\\_docman/task.doc\\_view/gid.1198/](http://documentostics.com/component/option.com_docman/task.doc_view/gid.1198/)

<sup>497</sup> <https://www.rrtv.cz/en/static/documents/act-231-2001/Act-on-RTV-broadcasting-reflecting-AVMSD.pdf>

## 6.5.2. National rules applicable to audiovisual sports content

### 6.5.2.1. Legal definitions of “broadcaster” and “sports event organiser”

In the Czech Republic, a definition of “broadcaster” is provided in private and public law. According to section 83(2) CA, a broadcaster (*vysílatel*) is a

*natural person or legal entity which, under their responsibility, broadcasts sounds, or images and sounds, or representations thereof by radio or television, or for which another party does so on the initiative of such a natural person or legal entity.*

In addition, pursuant to section 2(1)(g) of the Broadcasting Act (BA) – Act No. 231/2001 Coll., on Radio and Television Broadcasting and on the Amendments to Other Acts (*Zákon č. 231/2001 Sb., o provozování rozhlasového a televizního vysílání a o změně dalších zákonů*)<sup>498</sup> a “radio and television broadcaster” (*provozovatel rozhlasového a televizního vysílání*) is a

*legal or natural person that prepares a programme, including services directly related to the programme, determines the method of organising radio and television broadcasting, bears editorial responsibility for this broadcasting and uses a unique audio or visual identification, which guarantees no confusion in respect of the programme and services directly related thereto, to distribute the programme and the services directly related thereto by his/her own means or through third persons.*

The definition provided in the CA is broader, because the public law definition covers only broadcasters that obtain an authorisation (a license/registration) for broadcasting from the Council for Radio and Television Broadcasting (RRTV) (*Rada pro rozhlasové a televizní vysílání*) or that are established by a particular legal act.<sup>499</sup> However, the public law authorisation is not a prerequisite to benefit from copyright protection.<sup>500</sup>

There is no definition of “sports event organiser” in the CA. However, section 7a of Act No. 115/2001 Coll., on Support for Sport (*Zákon č. 115/2001 Sb., o podpoře sportu*),<sup>501</sup> defines the “operator” (*provozovatel*) as a person that is authorised by the owner of the sports facility to organise a “sports undertaking” (*sportovní podnik*) under the stipulation of obligations relating to the safety of persons and property during the course of the sports undertaking.

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<sup>498</sup> <https://www.zakonyprolidi.cz/cs/2001-231>.

<sup>499</sup> Section 3(1) BA.

<sup>500</sup> Leška R. § 83, in Polčák et. al., p. 557.

<sup>501</sup> <https://www.psp.cz/sqw/sbirka.sqw?cz=115&r=2001>.



Similarly, there is no legal definition of a “sports event broadcast” under Czech law. The BA uses the term “broadcasting of sports event” and “live transmission of sports event”, without further elucidation in the context of the obligations of the radio and television broadcaster as regards the promotion of European production (sections 42, 43 BA) and advertisement and product placement (sections 49, 50, 53a BA).

#### 6.5.2.2. Legal protection related to sports events

In accordance with the Court of Justice of the European Union (CJEU) *Football Association Premier League Ltd. (FAPL) case*,<sup>502</sup> live sports events as such (i.e. the actual matches) do not qualify as subject matter protected by copyright in Czech law.<sup>503</sup> Subsequently, any unauthorised use of live sports events “as such” cannot be addressed within the copyright framework. In addition, there is no specific legal protection for sports event organisers in Czech copyright law.

However, sports event organisers hold the right to authorise or prohibit the broadcasting/making of audiovisual recordings of the sports event, based on their right to regulate the presence of the public at the sports event venue.<sup>504</sup> Based on this right, which can be considered as a “house right” (or “domiciliary right”), sports event organisers may, for example, rely on contractual obligations to prohibit visitors to the venue from webcasting or otherwise recording the sports event. Subsequently, any infringement of this obligation would be treated as a contract violation.

The scope of this “house right” may vary depending on self-regulation by the relevant leagues and federations. An example might be the Statutes of the League Football Association (*Ligová fotbalová asociace*) which stipulate that the main aim of the association is the “use and exploitation of television, marketing, advertising and radio rights to the national league competitions”.<sup>505</sup> Consequently, “this permission [to broadcast or make the recording] is thus granted by an agreement of an atypical legal nature, however, closely resembling the licence agreement”.<sup>506</sup> As a result, such authorisation is only of a relative nature, as it is only effective against the parties to the contract, and not against third parties.<sup>507</sup>

On the other hand, if the organiser makes an audiovisual recording of the sports event, the protection granted to the producer of the audiovisual fixation (“related” or

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<sup>502</sup> CJEU, 4 October 2011, *Football Association Premier League Ltd and Others v QC Leisure and Others* (C-403/08) and *Karen Murphy v Media Protection Services Ltd* (C-429/08), paragraph 96, <https://curia.europa.eu/juris/liste.jsf?language=fr&num=C-403/08>.

<sup>503</sup> *Telec/Tůma*, p. 18.

<sup>504</sup> Leška R. in Polčák et al., pp. 558–559. In the Study on sports organisers’ rights in the European Union prepared for the European Union by T.M.C. Asser Instituut /Asser International Sports Law Centre Institute for Information Law – University of Amsterdam, this *modus operandi* is described as a “house right”.

<sup>505</sup> Article II paragraph 1 letter b) of the Statutes of the League Football Association. Available in Czech from: <https://www.lfafotbal.cz/dokument/175-stanovy-lfa-od-12-5-2020>.

<sup>506</sup> *Telec/Tůma*, p. 818.

<sup>507</sup> *Telec/Tůma*, p. 818.





“neighbouring” right) foreseen in sections 79–82 CA applies.<sup>508</sup> According to section 80 CA, the producer of the audiovisual recording (fixation) is the initial owner of the rights attached to the recording.

Furthermore, the broadcaster shall be considered as the initial owner of the related rights attached to the broadcast (section 84 CA). These rights include an exclusive transferable economic right to use its broadcast and to grant an authorisation to exercise this right to another person on a contractual basis (usually through a licence). The use of a broadcast without the permission of the broadcaster is possible only in the cases foreseen by the CA, on the basis of exceptions and limitations to this exclusive right. Sports event broadcasts are granted the same protection as any other types of broadcast. According to section 84(2) CA, the right to use the broadcast covers the right to make a fixation of the broadcast; to reproduce the broadcast fixation; to distribute copies of the fixed broadcast; to communicate it to the public. It must be noted that this right is construed more widely than foreseen in Article 3(2)(d) of the InfoSoc Directive and Article 8(3) of the Rental and Lending Right Directive 2006/115/EC.<sup>509</sup> The online transmission of the broadcast (or its recording) shall also be subsumed under the right to communicate the broadcast to the public.

As the holder of the rights attached to the broadcast of the sports content, the broadcaster is also the one who is entitled to take legal action in the case of infringement of broadcasting or online transmission of sports events. According to section 86 CA, sections 40 and 41 CA – which regulate the remedies and injunctions available to rightsholders – apply similarly to the broadcaster and to its broadcast as well, i.e. the broadcaster has the right to demand the claims regulated in section 40 CA, as elaborated below.

Where the right of the broadcaster has been transferred to a third party, the transferee, as the new rightsholder, will be the person entitled to take the legal action for infringement. In addition, a licence for the right to use the broadcast may also be granted. In this context, section 41 CA states, that the exclusive licensee shall be the only person entitled to lodge specific claims in section 40 CA in relation to the infringement of the licensed rights (the initial rightsholder is entitled to make the remaining claims).

The rights in a broadcast are not collectively managed, i.e. the collective management organisation will not be entitled (i.e. lacking “active legitimation”) to take legal action.

With regard to administrative and criminal proceedings, any prejudiced party is entitled to initiate them. In the criminal procedure, the victim can fully exercise his/her right

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<sup>508</sup> Telec/Tůma, p. 819.

<sup>509</sup> In accordance with the C More Entertainment decision (C-279/13) (see Telec/Tůma, p. 827).



*to petition for the court to impose an obligation on the defendant in the convicting judgment to compensate in monetary terms the damage or non-material damage caused to the victim by the commission of the criminal offence or to surrender any unjust enrichment which the defendant obtained at the victim's expense through a criminal offence (section 43(3) PPC).*

In the administrative procedure for administrative offences the victim can do the same vis-à-vis the administrative body.

### 6.5.2.3. Other specific rules applicable to sports events

Sports event broadcasts do not enjoy any other specific protection and are protected in the same way as other types of broadcast.

In addition, no specific rules are provided under Czech law concerning the use of sports content in social media.

**Table 37. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
<b>Broadcaster</b>	Yes	Related rights
<b>Sports event organiser</b>	No (but section 7a of Act No. 115/2001 Coll., on Support for Sport ( <i>Zákon č. 115/2001 Sb., o podpoře sportu</i> ) provides a definition of “operator” ( <i>provozovatel</i> ) as a person that is authorised by the owner of the sports facility to organise a sports undertaking)	Rights linked to the venue (i.e. house rights)

*Source: Czech response to European Audiovisual Observatory standardised survey*

## 6.5.3. Remedies and sanctions applicable in the event of infringement

### 6.5.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

There are no specific measures available for online piracy of audiovisual sports content and the general rules therefore apply. Sanctions, remedies and injunctions applicable in the case of copyright infringement are mostly provided in the CA. In



particular, these issues are regulated in section 40 CA and related provisions in the CC and the CPC (for civil law), section 105a-105d CA and the AOA (for administrative law) and in section 270 PC and related provisions in the PPC (for criminal law).

The civil liability claims are contained in section 40 CA. If the rights protected by the CA are infringed or exposed to danger of infringement, the rightsholder (i.e. the broadcaster, according to Article 86 CA) may claim the following remedies and injunctions: the prohibition of further infringement/of exposure to danger of infringement (negatory claim/injunction); an information claim related to copyright infringement (remedy); a remedy for the consequences of the infringement (restitution claim – i.e. a “corrective measure”); adequate satisfaction for the immaterial damage (apology, pecuniary satisfaction – if the apology is not satisfactory); an injunction (prohibition of the provision of the service used by third parties to infringe or to expose to danger of infringement – applicable against non-infringing providers (third parties acting as intermediaries) of a service used by its users to infringe the rights protected by the CA).

Section 40(3) CA contains the right to publicise the decision of the respective court deciding on the copyright infringement. Section 40(4) CA states that the claim for damages and unjust enrichment pursuant to the CC remains unaffected; however, the CA regulates how the amount of remuneration may be determined. The rightsholder may, instead of the profits actually lost, demand damages in the amount of the remuneration that would be due if the infringer had requested authorisation at the time of dealing with the protected subject matter (i.e. a lump sum in the form of “licence analogy”).<sup>510</sup> The same applies to unjust enrichment – in this case the amount requested may be double the usual remuneration.

Procedurally, the rightsholder may also ask for an interim measure, based on section 74 CPC, “before proceedings are initiated, if necessary, to provisionally modify the relation of participants, or if feared the enforcement of the judicial decision could be jeopardised”.

With regard to administrative sanctions in the case of copyright infringement, the CA provides for fines of up to CZK 150 000 for natural persons and legal entities/natural persons acting as entrepreneur, who commit an administrative offence by unlawfully using a copyright work, artistic performance, audio or audiovisual recording, radio or television broadcast or database; and for fines of up to CZK 100 000 for natural persons and legal entities/natural persons acting as entrepreneur in the case of circumvention of technological protection measures or businesses dealing with illicit devices or tampering with rights management information or distributing, importing or receiving for the purpose of distribution, by broadcasting or communicating to the public (including by making available) protected subject matter from which the information about the management of the rights was unlawfully removed or changed.

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<sup>510</sup> Tuláček J. § 40, in Polčák et. al., p. 426; Telec/Tůma.

In addition, the criminal offence of copyright infringement under section 270 PC is punishable by imprisonment and other penalties: disqualification (i.e. prohibition of activity), forfeiture of items and a monetary penalty. However, as previously mentioned, the criminal law enforcement of copyright is considered the *ultima ratio* as noted by the Constitutional Court.<sup>511</sup>

On the other hand, according to Act No. 206/2005 Coll., on the Protection of Certain Broadcasting Services and Information Society Services, as amended (CASA) (which transposes into Czech law the Conditional Access Directive), a protected service may be understood as radio and television broadcasting and an information society service provided for remuneration and based on conditional access, or providing conditional access to these services when provided as a service in its own right (section 2(a) CASA; which corresponds to Article 2(a) of the Conditional Access Directive).

Violation of the rules set forth is regarded as an administrative offence punishable by an administrative fine of up to CZK 2 000 000 for the manufacture, importation, distribution, sale, rental or possession for commercial purposes of illicit devices (violation of section 4(a) CASA, i.e. Article 4(a) of the Conditional Access Directive); and up to CZK 500 000 for the installation, maintenance or replacement for commercial purposes of an illicit device; the use of commercial communications to promote illicit devices (i.e. violation of section 4(b) and (c) CASA, i.e. Article 4(a) and (c) of the Conditional Access Directive). The responsible administrative body for proceedings is the Czech Telecommunication Office (section 6 CASA). The Czech Telecommunication Office proceeds according to the procedural rules regulated in the Administrative Offences Act (AOA).

Concerning the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive), section 43 CA (which implements Article 6 of the InfoSoc Directive) establishes a specific delict of circumvention of effective technical protection measures (including by the production, importation, reception, distribution, selling, promotion, etc. of circumventing devices). Section 43 CA addresses expressly only the technical measures protecting the copyrighted work; however, this provision applies to other subject matter protected by the CA – such as broadcasts protected by the related rights of a broadcaster as well.

Under Czech law, in the case of circumvention of technological measures, civil, administrative as well as criminal liability may apply. The civil liability claims are contained in section 40 CA (as mentioned above). Administrative offences consisting in infringement of section 43(1) or section 43(2) CA are regulated in section 105a(1)(b) CA (for a natural person as an offender), and in section 105b(1)(b) CA (for a legal person or if a natural person as entrepreneur acts as an offender). In the case of criminal liability, the same general provision as for the infringement of copyright or related rights also applies, i.e. section 270 PC. This is because the circumvention of the effective technical protection

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<sup>511</sup> Constitutional Court, 12 October 2006, file No. I. ÚS 69/06.

measures is considered an infringement of copyright (or of the related rights) according to section 43(1) CA.

Article 8(3) of the InfoSoc Directive is transposed in section 40(1)(f) CA allowing the rightsholder to “demand (...) prohibition against providing the service that is used by third parties for breaching or endangering the rights”, if the rights are unlawfully infringed or are in danger of unlawful infringement. Similarly, following the principle of *argumentum a maiore ad minus* the rightsholder may demand a prohibition against providing segments/parts of the respective service.<sup>512</sup>

#### 6.5.3.2. National bodies with competences on copyright enforcement

There is no general national authority (e.g. administrative body) other than judicial bodies with specific competences to address copyright infringement in the Czech Republic. The civil and criminal cases are handled by general courts. Administrative offences are dealt with, in the first instance, by the municipal office of a municipality with extended competence (*obecní úřad obce s rozšířenou působností*, i.e. an administrative body), in whose territory the administrative offence was committed (section 105c(1)(a) CA). It is possible to appeal, in the second instance, to the regional office (*krajský úřad*).<sup>513</sup>

#### 6.5.3.3. Codes of conduct and Memorandums of Understanding

There are no codes of conduct and/or Memorandums of Understanding or similar documents that have been adopted at the national level related to the enforcement of intellectual property rights and in relation to the fight against online piracy.

#### 6.5.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

There is no specific regulation regarding cases of online piracy of audiovisual sports content, thus general rules are applicable. Moreover, there is also no general regulation of notice and take-down (or stay-down for that matter) procedure under Czech

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<sup>512</sup> Husovec, p. 168.

<sup>513</sup> The municipal offices may decide on the violations of provisions of the CA as such, i.e. they directly address the infringement of copyright. As a result of an administrative procedure, various sanctions may be imposed. Section 89 of the AOA contains regulation concerning the proceedings for damages and for the surrender of unjust enrichment. However, any other measure such as injunctions in the case of copyright infringement, etc. are not regulated in the AOA and hence cannot be imposed by the municipal offices.



law vis-à-vis (hosting) internet service providers (ISPs), e.g. legal requirements as to whom, how and in what form this notice shall happen.<sup>514</sup>

The ISSPA only regulates the liability exemption regime for ISPs in sections 3–5 and prohibits general monitoring and active searching for facts and circumstances pointing to the illegal content of information in section 6 ISSPA. The notice is however the main tool that makes the hosting provider aware of the illegal nature of the stored information or the behaviour of the user.

In order to establish the (actual) knowledge of the hosting provider, the notification shall identify accurately the content that is, according to the notifier, of an unlawful nature, indicating exactly what the unlawfulness of the content is (it has to be sufficiently precise or adequately substantiated, as the CJEU ruled in *L'Oréal v. eBay*, C-324/09, paragraph 122). If the notification does not identify what the unlawfulness of the content consists in, it shall not be considered precise enough.<sup>515</sup> As to the person entitled to submit such a notice, the legal doctrine opines that it could be anyone.<sup>516</sup> However, this will usually be the rightsholder or representative thereof.

The ISP must examine the notification and respond to it. It seems impossible to establish a needed uniform reaction time for the ISP, and this will have to be assessed according to the circumstances of individual cases, depending on the type of service, the nature of the unlawfulness or on the person/type/nature of the provider.<sup>517</sup> In reaction to the notification, the provider can remove the content or deny access to it.<sup>518</sup> From a practical point of view, the rightsholder should make sure that it could be proven later that such a notice was actually sent.<sup>519</sup>

#### 6.5.3.5. Removal and blocking orders

There is no specific regulation regarding online piracy of audiovisual sports content per se and the Czech legal order does not explicitly regulate the specific measures mentioned, thus the general rules apply. Injunctions may be targeted against both infringers and if applicable, also against non-infringers (third parties).

As mentioned earlier, section 74 et seq. CPC regulates interim measures (“preliminary measures, interlocutory injunctions”), that may be ordered by the judge before proceedings are initiated, if necessary, to provisionally modify the relation of

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<sup>514</sup> Polčák R. (2018) “Odpovědnost ISP” in Polčák R. et al., *Právo informačních technologií*, Wolters Kluwer, p. 86

<sup>515</sup> Matejka J. and Krausová, A. (2017), *Odpovědnost poskytovatelů hostingových služeb se zřetelem k povaze a druhu přenášeného obsahu*, *Právník*, vol. 156, No. 9, p. 762.

<sup>516</sup> Polčák R. (2018) “Odpovědnost ISP”, in Polčák R. et al., *Právo informačních technologií*, Wolters Kluwer ČR, p. 86.

<sup>517</sup> Polčák R. (2018) “Odpovědnost ISP”, in Polčák R. et al., *Právo informačních technologií*, Wolters Kluwer ČR, p. 86.

<sup>518</sup> Polčák R. (2018) “Odpovědnost ISP”, in Polčák R. et. al., *Právo informačních technologií*, Wolters Kluwer ČR, pp. 87-88.

<sup>519</sup> Husovec, pp. 115-119.



participants, or if feared the enforcement of the judicial decision could be jeopardised. According to section 76(1)(f) CPC, the court may oblige the participant to make, omit or delete a content. Section 76(2) CPC furthermore stipulates that this measure may be imposed on a third party, who is not a party to the court proceedings, provided that the measure is temporary and that it is fair to impose it on the third party. Furthermore, pursuant to section 75b, the plaintiff must provide a guarantee (CZK 10 000, respectively CZK 50 000 in commercial matters or even more if the amount is manifestly insufficient) that will be used to cover compensation for damages or any other loss potentially caused by the interim measure. The proceedings are *ex parte* proceedings.<sup>520</sup> The execution thereof can be requested by the court or the bailiff, subject to the imposition of a fine. On the basis of this provision, the infringer or the ISP could be obliged to make a content inaccessible. As mentioned, an interim measure is only temporary – i.e. it is limited in time (section 77 CPC) and should not replace the decision in the case concerned. As a result, the plaintiff must file a proposal for the initiation of proceedings (action) (section 77(1)(a) CPC), otherwise the interim measure expires.

In addition to the above, the CA provides for a specific blocking injunction against non-infringing intermediaries. In particular, section 40(1)(f) CA encompasses the claim of a rightsholder to require the prohibition of a service which infringes copyright or related rights (wholly or partially). Therefore, the rightsholder can directly request the ISP or platform to refrain from providing infringing content or to remove it. Under section 40(1)(f) CA, the rightsholder whose rights have been unlawfully infringed or are in danger of being infringed may request the prohibition of the provision of the service which is used by third parties to infringe or endanger the rights. Similarly, according to the *argumentum a maiore ad minus* principle, rightsholders may request that the provision of segments or parts of the respective service be prohibited.<sup>521</sup> In this case, the intermediary may be both the hosting provider or the access provider. From a procedural point of view, this injunction is a measure resulting from a decision on the merits of the case, i.e. it has to be ordered in the framework of a standard civil procedure where the rightsholder also has to claim and prove the infringement or the danger of infringement caused by the service provided.<sup>522</sup>

Section 40(1)(c)(2) and (3) CA contains the right to request information about the subject who used a service infringing copyright or related rights, or who endangers these rights for an economic purpose, or who provides this service.

Procedurally, these measures must be carried out in standard civil proceedings in which the rightsholder must also claim and prove with material evidence the infringement or danger of infringement through the service provided.<sup>523</sup> At the end of this civil procedure, the court may decide to grant the injunctions provided for in section 40

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<sup>520</sup> Šindelka, p. 299.

<sup>521</sup> Husovec, p. 168.

<sup>522</sup> Telec/Tůma, p. 503.

<sup>523</sup> Telec/Tůma, p. 503.



CA, provided that the claimant is able to prove beyond reasonable doubt the facts of infringement by the defendant. This decision can then be appealed and challenged on extraordinary appeal, as provided for in the CPC.

From a practical point of view, rightsholders have not been able to assert their rights to any appreciable extent since the implementation of these provisions. After 2013, rightsholders initiated several proceedings seeking various remedies, but the courts have been slow to process the majority of legal actions.<sup>524</sup> In this context, these types of measures have not been thoroughly tested or not tested at all in national courts, e.g. an injunction against an access provider has not yet been heard by the Czech courts (i.e. blocking of website). All these remedies could therefore be based either on the interim measure (interlocutory injunction) or on section 40(1)(f) CA. The extensive case law of the CJEU on the possible scope of such measures and their proportionality will be followed by the Czech courts. Furthermore, in some cases the court has ordered the defendants to refrain from permitting the communication to the public of digital files.<sup>525</sup> In another case, the court decided to order dismantling when certain illegal and indecent words were published.<sup>526</sup> However, none of these cases are related to audiovisual sports content.

#### 6.5.3.6. Measures against end-users

There are no cases related to the application of measures against end-users. The application of measures such as suspending or blocking internet access would certainly be subject to constitutional scrutiny, as it could be qualified as a grave infringement of the fundamental rights of freedom of speech/right to information (Article 17 (Czech) Charter).

#### 6.5.3.7. Criminal sanctions

Online piracy of audiovisual sports content may be considered a criminal offence as regulated in section 270 PC, applying the PPC, as the legal framework for all the criminal proceedings. The criminal offence of copyright infringement under section 270 PC is punishable by imprisonment and other penalties: disqualification (i.e. prohibition of activity), forfeiture of items and monetary penalties. The monetary penalty is a specific type of penalty (section 52 PC) whose severity is regulated in section 68 PC: it shall be imposed in terms of daily rates, the total number of which shall be at least 20 and at most

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<sup>524</sup> Leška R., *Žaloby proti úložistům: soudní řízení zahájena nositeli práv v České republice*. Szczepanik P.; Zahrádka, P. *Mapa audiovizualního pole v České republice z hlediska digitalizace a strategie pro jednotný digitální trh*.pdf. Masarykova Univerzita, 2018, pp. 55, 56. Available from: <https://fondkinematografie.cz/assets/media/files/analyzy2018/Mapa%20audiovizualniho%20pole%20v%20Ceske%20republice%20z%20hlediska%20digitalizace%20a%20strategie%20pro%20jednotny%20digitalni%20trh.pdf>.

<sup>525</sup> *DILIA v. Uloz; Cinemart v Uloz.to; share-rapid.cz*.

<sup>526</sup> *Prolux; Parlamentniistry.cz case*.



730 full daily rates. A daily rate shall amount to at least CZK 100 and at most CZK 50 000. It must be reiterated that the criminal law enforcement of copyright is considered the *ultima ratio* as noted by the Constitutional Court.

In addition, there are specific rules in the Juvenile Justice Act<sup>527</sup> regarding the illegal conduct of minors, or in Act No. 418/2011 Coll., on the Criminal Liability of Legal Persons and Proceedings, regarding the illegal conduct of legal persons. The procedure is (with minor specificities, e.g., in the case of criminal proceedings involving minors or legal persons) similar for all criminal offences and does not reflect any specific differences regarding online piracy of audiovisual sports content. The police, together with the public prosecutor and the court, constitute the prosecuting authorities in criminal proceedings (section 12 (1) PPC). Proceedings against the offender can be initiated by anyone – anyone can file a (criminal) complaint (report) with the police. The police themselves can also initiate the procedure *ex officio* (section 158 PPC). Proceedings can be initiated even against an unidentified offender (i.e. one who has not yet been identified) – this is usually the case in the online environment where offenders tend to try to hide their identity.

**Table 38. National regulation applicable on audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No, national copyright law is applied
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial bodies)	No, general courts + administrative bodies in the case of administrative offences are competent
Entitlement to take legal action	Yes (rightsholders, broadcasters)
Codes of conduct	No
Specific proceedings	No
Specific remedies	No

Source: Czech response to European Audiovisual Observatory standardised survey

**Table 39. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes

<sup>527</sup> Act No. 218/2003 Coll. (zákon č. 218/2003 Sb., o odpovědnosti mládeže za protiprávní činy a o soudnictví ve věcech mládeže a o změně některých zákonů, ve znění pozdějších předpisů).



<b>Differentiation of criminal sanctions based on acting for profit</b>	Yes
<b>Removal and blocking injunctions</b>	Yes
<b>Dynamic and/or live blocking injunctions</b>	No
<b>De-indexing injunctions</b>	Yes
<b>Damages and orders to cease and desist</b>	Yes
<b>Administrative offence and remedies</b>	Yes
<b>Notice and take-down procedures</b>	No

Source: Czech response to European Audiovisual Observatory standardised survey

#### 6.5.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions, in relation to online infringement of audiovisual sports content.

**Table 40. Relevant case law related to the infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
<b>Communication to the public</b>	<p>The application of the concept of communication to the public in cases where a subject allows persons to watch a broadcast event unlawfully and without paying fees.</p> <p>The recognition of criminal liability for providing embedded links to protected subject matter made available unlawfully on a for-profit basis.</p> <p>The analysis of the concept of “communication”, “public” and “new public”.</p>	<p>Supreme Court of the Czech Republic 15 August 2018, file No. 5 Tdo 692/2018</p> <p>The GS Media judgment</p> <p>Supreme Court of the Czech Republic 14 October 2015, file No. 31 Cdo 3093/2013</p> <p>Czech Constitutional Court II. ÚS 3076/13, II. ÚS 2186/14, IV. ÚS 2445/14, III. ÚS 3102/16, or III. ÚS 1598/19</p>
<b>Hosting providers' knowledge and awareness of illegal activity</b>	<p>The provider must automatically remove information that is evidently illegal, i.e. when there is no doubt about its illegal nature.</p>	<p>Municipal Court in Prague, High Court in Prague, Supreme Court of the Czech Republic, Municipal Court in Prague</p> <p>17 March 2010, file No. 10 Cm 47/2009</p> <p>2 March 2011, file No. 3 Cmo</p>



Content	Substance of the decision	Decisions
		197/2010-82; 31 July 2013, file No. 23 Cdo 2623/2011 12 January 2015, file No. 66 C 143/2013.
<b>Notice and take-downs</b>	N/A	N/A
<b>Measures against end-user</b>	N/A	N/A
<b>Criminal sanctions</b>	A six-month conditional prison sentence as a measure for broadcasting an event unlawfully and without paying fees	Supreme Court of the Czech Republic 5 Tdo 692/2018

Source: Czech response to European Audiovisual Observatory standardised survey

#### 6.5.4.1. Communication to the public

- In Case I. ÚS 578/15, the Constitutional Court summed up the Czech understanding and application of the CJEU judgments in *Svensson* (C-466/12), *BestWater* (C-348/13) and *GS Media* (C-160/15) and their application to the specific situation of communication to the public via linking.<sup>528</sup> The Constitutional Court has identified four possible situations that may arise with regard to the linking to copyrighted works where it is possible to characterise such conduct as copyright infringement. The first three options do not constitute communication to the public. linking to the protected work made available on the original website lawfully
- linking to protected works made available on the original website unlawfully (available lawfully on another website)
- linking to protected works made available to the public on the original website unlawfully (unavailable elsewhere)
- the person responsible for the linking knew or could reasonably know that the work had originally been made available unlawfully and the person did not have the permission of the holder of economic rights; this is considered an unlawful communication to the public in sense of section 18 CA.

Furthermore, if the link has been published for profit, knowledge of the unlawful nature of making the work available is presumed. In this particular case, the unlawful communication to the public consisted in linking to individual episodes of a series (using

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<sup>528</sup> Constitutional Court, I. ÚS 578/15, paragraph 16



embedded links), but in principle, the criteria summed up by the Constitutional Court based on the case law of the CJEU, are applicable generally.

#### 6.5.4.2. Online infringement of audiovisual sports content

A publicly available judgment (Supreme Court of the Czech Republic, 15. 8. 2018, file No. 5 Tdo 692/2018) dealt explicitly with the online infringement of audiovisual sports content and the concept of communication to the public.<sup>529</sup> In this case, the infringer, driven by the intention of allowing other persons unknown to him to watch television broadcasts without paying television fees, repeatedly operated five main websites via the internet as a general maintainer and administrator. On these websites he made public the programmes of at least five television stations without the consent of the respective entitled entities, by placing and retaining links enabling access to other websites with broadcasts of these television stations, allowing anyone to access them in the place and at the time of their choosing through the internet computer network. This was done with the understanding that the linked websites contained illegal broadcasts of sports programmes for which other entities held licence rights. The defendant was found guilty of infringement of copyright and of rights related to copyright under section 270(1) PC and was sentenced to a conditional prison sentence of six months.

There have been other cases where the rightsholders have initiated criminal proceedings – which have not yet reached the judgment stage. Either the prosecution has been conditionally suspended or the case has not even started.

In general, according to sections 40 and 41 CA, civil legal action based on the protection of the rights of broadcasters can be initiated by the broadcaster (initial rightsholder) or the exclusive licensee (section 41 CA), or the person to which the right was transferred by the broadcaster; in criminal law, a (criminal) complaint can be submitted by the rightsholder as well as by the sports event organiser (section 158 PPC).

#### 6.5.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

The notification shall identify accurately the content that is, according to the notifier, of an unlawful nature, indicate exactly in what the unlawfulness of the content consists (it has to be sufficiently precise or adequately substantiated as the CJEU ruled in

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<sup>529</sup> Czech case law from courts of lower instance (trial courts, i.e. regional courts – *krajský soud* – in the case of civil law enforcement and district courts – *okresní soud* – in the case of criminal enforcement) and appellate courts (high courts – *vrchní soud* – in the case of civil law enforcement and regional courts – *krajský soud*) are not available, as it is not published or made available online.



*L'Oréal v. eBay*, C-324/09, paragraph 122). If the notification does not identify in what the unlawfulness of the content consists, it shall not be considered precise enough.<sup>530</sup> As to the person entitled to submit such a notice, the doctrine opines that it could be anyone,<sup>531</sup> however, it will usually be the rightsholder or a representative thereof. It seems impossible to establish a required uniform reaction time for the ISP – this will have to be assessed according to the circumstances of individual cases, depending on the type of service, the nature of the unlawfulness or on the person/type/nature of the provider.<sup>532</sup> In reaction to the notification, the provider can remove the content or deny access to it.<sup>533</sup> From a practical point of view, the rightsholder should make sure, so that it can be proven later (e.g. in the actual civil proceedings) that such a notice was sent.

In the *Prolux* case, the courts dealt not only with the question of the provider's knowledge of the existence of the information, but also with the knowledge of the unlawful nature of this information.<sup>534</sup> The court stated that the provider must automatically remove information that is evidently illegal, that is, when there is no doubt about its illegal nature (i.e. where the constructive knowledge might be established pursuant to section 5(1)(a) of the ISSPA). If the illegal nature is not evident, the actual knowledge of a provider is established by informing the provider about the unlawful information pursuant to section 5(1)(b) of the ISSPA. As the High Court noted, this criterion actually covers a broader spectrum of situations – the unlawful nature of the information could be decided upon by a court in a decision or proven by other means to the ISP.<sup>535</sup>

#### 6.5.4.4. Notice and take-down requirements

As such, there is no formalised out-of-court notification procedure of a copyright infringement vis-à-vis the infringer in the CA or the CPC. However, in criminal cases dealing with criminal liability for providing hyperlinks to unauthorised content, the notification sent by the Czech Antipiracy Union<sup>536</sup> to the service provider effectively leads

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<sup>530</sup> Matejka J. and Krausová A. *Odpovědnost poskytovatelů hostingových služeb se zřetelem k povaze a druhu přenášeného obsahu*. Právník. 2017, vol. 156, No. 9, p. 762.

<sup>531</sup> Polčák R, "Odpovědnost ISP", in Polčák R et al., *Právo informačních technologií*, Wolters Kluwer ČR, 2018, p. 86.

<sup>532</sup> Polčák R, "Odpovědnost ISP", in Polčák R et al., *Právo informačních technologií*, Wolters Kluwer ČR, 2018, pp. 87-88.

<sup>533</sup> Husovec, p. 115-119.

<sup>534</sup> Municipal Court in Prague, 17 March 2010, file No. 10 Cm 47/2009; High Court in Prague, 2 March 2011, file No. 3 Cmo 197/2010-82 and Supreme Court of the Czech Republic, file No. 23 Cdo 2623/2011.

<sup>535</sup> High Court in Prague, 3 Cmo 197/2010-82.

<sup>536</sup> The Czech Anti-Piracy Union is a non-governmental organisation protecting movies and audiovisual content in the Czech Republic. It represents local theatres and home entertainment distributors, HBO and MPA.



to the inability of the alleged infringer to claim (in relation to the subjective element, i.e. fault), that they were unaware of the illegality of their actions.<sup>537</sup>

On the other hand, in the *sledujserialy.cz* criminal case, the District court in Prague ruled that an unsubstantiated notification by the Czech Anti-Piracy Union without detailed specifications and also without attached powers of attorney did not lead to the rebuttal of the presumption of non-commercial use.<sup>538</sup> Furthermore, the special notice vis-à-vis the hosting provider is not regulated either. Removal and blocking orders

Concerning removal and blocking orders, in the cases of *Parlamentnilisty.cz*, *PROLUX* and *DILIA v. Ulož.to*, the courts ordered injunctions against the ISPs.<sup>539</sup> In the *Cinemart v. Ulož.to* case the Municipal Court in Prague issued an interlocutory injunction (interim measure) against a hosting provider.<sup>540</sup> However, these cases were not related to sports event content.

#### 6.5.4.5. Measures against end-users ordered by the courts

At the present moment, there are no relevant cases in which measures against end-users have been ordered by the courts.

#### 6.5.4.6. Compensation criteria adopted by the courts

In the Czech Republic, there is no specific legal regulation of criteria applied to compensate damages that have occurred to sports event broadcasters. Thus, the regulation of section 40(4) CA applies (referring to the CC). Therefore, a claim for damages is materially regulated within the Czech legal framework in section 2894 et seq. CC (as the “special law”). However, the CA regulates an alternative mechanism to ensure protection to the rightsholder, due to the fact that it is usually relatively complicated for the injured party to estimate the damage caused by the infringement of copyright, and especially the lost profit, in the case of copyright infringement. In particular, section 2955 CC provides that “If the amount of compensation of damage cannot be accurately determined, it is determined by a court on the basis of a fair consideration of each circumstance”.

The Constitutional Court specified that section 2955 CC shall serve as an instrument to help with the determination of damage in situations in which it is

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<sup>537</sup> Myška, M. “Data a právo duševního vlastnictví”, in Polčák et al., *Právo informačních technologií*. Wolters Kluwer ČR, 2018, p. 133.

<sup>538</sup> District Court in Prague 4, 16 January 2017, file No. 33 T 54/2016.

<sup>539</sup> Municipal Court in Prague, 12 January 2015, file No. 66 C 143/2013; Municipal Court in Prague, 17 March 2010, file No. 10 Cm 47/2009; High Court in Prague, 2 March 2011, file No. 3 Cmo 197/2010-82 and Supreme Court of the Czech Republic, file No. 23 Cdo 2623/2011; Municipal Court in Prague, 22 February 2019, file No. 34 C 5/2017.

<sup>540</sup> Municipal Court in Prague, 8 December 2020, file No. 1 Nc 27/2020.



impossible to precisely prove the amount of damages. “Fair consideration” does not represent arbitrariness of the court; it has to be determined on the basis of the “individual circumstances of the particular case” as they emerged from taking evidence.<sup>541</sup>

The wording of section 40(4) CA is subject to interpretation as well. When dealing with “the remuneration that would be usual for obtaining such a licence at the time of the unauthorised handling of the work”, the recognition of the author (for sports event broadcasts it would probably be the reach of the broadcast and the nature of the event) is also a considered criterion.<sup>542</sup> The Supreme Court of the Czech Republic also dealt with the interpretation of section 40(4) CA, specifically with the method of determining the amount of loss of profit (or unjust enrichment) in the sense of this provision.<sup>543</sup> This decision further follows established cases (based on the decision of 20 November 2008, *30 Cdo 149/2007*)<sup>544</sup> ruling that it is necessary, when interpreting the usual amount in the sense of section 40(4) CA, to distinguish between two different approaches to determining the amount for obtaining the licence – a lump sum payment, royalties, or a combination of the two (upfront payment and royalties). The Supreme Court did not disapprove of the conclusion of the general courts that considered the period of copyright infringement and not the number of unlawfully sold copies of copyrighted works. However, this approach is a subject of criticism.<sup>545</sup>

As noted above, the Czech legal order also provides the possibility for the injured party to claim damages within the course of criminal proceedings (in so-called “adhesion proceedings”). However, when it is complicated for the criminal court to estimate the damage suffered (especially because of the need for further extensive taking of evidence), the injured parties, i.e. the rightsholders, are referred to civil proceedings to claim damages (see mainly section 43(3) and 229 PPC), as in the abovementioned case *30 Cdo 5225/2016*,<sup>546</sup> which followed a previous decision within criminal proceedings. In the case *5 Tdo 692/2018*, the courts likewise referred the rightsholders with their claim for damages to civil proceedings. Otherwise, there is no case related to audiovisual piracy of sports content.

Czech law also allows to claim restitution of unjust enrichment – in this case double the amount of the usual remuneration (section 40(4) CA).

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<sup>541</sup> Constitutional Court, 24 June 2014, II. ÚS 1430/13-2, paragraphs 34, 35

<sup>542</sup> Tuláček, J. § 40, in Polčák R. et al., p. 426.

<sup>543</sup> Supreme Court of the Czech Republic, 17 May 2017, file No. 30 Cdo 5225/2016.

<sup>544</sup> <https://www.zakonyprolidi.cz/judikat/nscr/30-cdo-149-2007>

<sup>545</sup> Tuláček, J. § 40, in Polčák R. et al., p. 427.

<sup>546</sup> <https://iudictum.cz/253268/30-cdo-5225-2016>



#### 6.5.4.7. Criminal sanctions ordered by courts

The only available criminal case is the previously mentioned case ruled upon by the Czech Supreme Court *5 Tdo 692/2018*, in which the infringer had been found guilty of infringement of copyright and of rights related to copyright under section 270(1) PC. The sanction imposed in this case was a six-month conditional prison sentence (the defendant remained out of prison on condition that he must not continue the unlawful criminal conduct; the probation period was set for 14 months) and forfeiture of the defendant's property. The victims (i.e. the broadcasters) petitioned for the court to impose an obligation on the defendant in the convicting judgment to compensate for the damages in monetary terms (section 43(3) PPC). However, the court found that their claims were not proven as to the amount and thus they were referred to civil proceedings (sec 229(2) PPC).<sup>547</sup>

### 6.5.5. Reports and studies

In the Czech Republic, there are few publicly available comprehensive studies dealing with the issue of online piracy of protected content.

Some insights are presented in a study undertaken in preparation for the implementation of Article 17 of the DSM Directive by the Czech Ministry of Culture. The study is not entirely devoted to the piracy of audiovisual content. However, its impacts are considered and there is an entire section (3.4.4) which deals with the most significant services offering pirated content.<sup>548</sup>

National studies and reports elaborating on the technologies and business models used for illegal streaming of sports content have not been identified in the Czech Republic; neither have publicly accessible comprehensive national studies and reports elaborating upon the legal offer of online sports content.

No large-scale campaigns against online piracy have been reported recently. In 2006 the Czech Anti-Piracy Union (*Česká protipirátská unie*) launched a campaign entitled "Movies are not for free" with the aim of raising awareness about making illegal copies of copyrighted works (mainly audiovisual works – movies), considering both the distribution of physical media copies and unauthorised distribution using online services.<sup>549</sup> In 2000,

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<sup>547</sup> Trial court: District Court in České Budějovice, 19 December 2016, file No. 7 T 70/2016-597; Appellate court: Regional Court in České Budějovice, 22 February 2017, file No. 4 To 352/2017-15 – upheld the sanctions; extraordinary appeal: Supreme Court of the Czech Republic, 15 August 2018, file No. 5 Tdo 692/2018 – rejected the extraordinary appeal and thus upheld the judgments of the previous instances.

<sup>548</sup> II. *Analýza – Shrnutí informací k implementaci článku 17 směrnice*. EEIP, a.s., November 2019. Available from: [https://www.mkcr.cz/doc/cms\\_library/analiza-shrnuti-informaci-k-implementaci-clanku-17-smernice-2019-12626.pdf](https://www.mkcr.cz/doc/cms_library/analiza-shrnuti-informaci-k-implementaci-clanku-17-smernice-2019-12626.pdf).

<sup>549</sup> The campaign website is still online at <https://www.filmymejsouzadarmo.cz/cs/>, but it has not been updated since 2012.



the Czech branch of the International Federation of the Phonographic Industry (IFPI) launched a campaign against unauthorised copying entitled “*Kopírování zabíjí hudbu!*” (Copying kills music!).<sup>550</sup>

Regarding the existence of associations of broadcasters or rightsholders, some of the Czech commercial television broadcasters form the Association of Commercial Televisions (*Asociace komerčních televizí*), which states the protection of the rights of its members and the enforcement of those rights as one of its objectives.<sup>551</sup>

## 6.5.6. Data compilation

This country report is based on data compiled by Matěj Myška, JUDr, Ph.D, doc. JUDr Pavel Koukal, Ph.D, Mgr Ondřej Woznica and Mgr Zuzana Vlachová (Masaryk University).<sup>552</sup>

## 6.5.7. Annex

**Table 41. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive 98/84/EC</b>	Czech law by Act No. 206/2005 Coll. on the Protection of Certain Broadcasting Services and Information Society Services, as amended (CASA).
<b>Article 5 Conditional Access Directive 98/84/EC – Infringing activities</b>	Violation of rules set forth is regarded as an administrative offence punishable by administrative

<sup>550</sup> <https://musicserver.cz/clanek/1804/ifpi-spustila-protipiratskou-kampan/>

<sup>551</sup> Webpage of the Association available at: [www.aktv.cz/en/](http://www.aktv.cz/en/). The enforcement activities of the Association are also mentioned in the media (see, e.g. <https://mam.cz/marketing/2018-02/pirati-pripravuji-stanice-omiliony>)

<sup>552</sup> Abbreviations of literature used:

Main commentaries on the Copyright Act:

Polčák et al. – Polčák R. et al. *Autorský zákon Praktický komentář s judikaturou* (Copyright Act: Praxis Commentary with Case Law), Leges, 2020

Telec/Tůma – Telec I. and Tůma P. *Autorský zákon: komentář* (Copyright Act: Commentary) 2. vydání. Beck C. H., 2019

Further references::

Husovec – Husovec M., *Zodpovednosť na internete: podľa českého a slovenského práva* (online). Praha: CZ. NIC, 2014 (cit. 31. 1. 2021). Available from: [https://knihy.nic.cz/files/edice/zodpovednost\\_na\\_internete.pdf](https://knihy.nic.cz/files/edice/zodpovednost_na_internete.pdf).

Šindelka – Šindelka K. “Enforcement of Intellectual Property Rights in the Czech Republic”, in Petillion F. (ed.) *Enforcement of Intellectual Property Rights in the EU Member States* (online). Intersentia, 2019, pp. 263–302 (cit. 31-01-2021). Available from: doi:10.1017/9781780687827.009.



EU directives	National law
	fines: section 4(a) CASA, section 4(b) and (c) CASA
<b>InfoSoc Directive 2001/29/EC</b>	Copyright Act (CA)
<b>Article 6 InfoSoc – Obligations as to technological measures</b>	Section 43 CA, sections 43(1) to (6)
<b>Article 8 InfoSoc – Sanctions and remedies</b>	Section 40(1)(f) CA
<b>IPRED 2004/48/EC</b>	CA and CPC (procedural law)
<b>Article 6 IPRED – Evidence</b>	Sections 128 CPC, <sup>553</sup> 129 CPC, 133b CPC.
<b>Article 7 IPRED - Measures for preserving evidence</b>	Sections 78b-78g
<b>Article 8 IPRED – Right of information</b>	Section 40 CA
<b>Article 9 IPRED - Provisional and precautionary measures</b>	Not transposed, since the CPC already entailed the necessary institutes. <sup>554</sup>
<b>Article 10 IPRED – Corrective measures</b>	Section 40(1)(d) CA and Article 10 (3) IPRED correspond to Section 40(2) CA. <sup>555</sup>
<b>Article 11 IPRED – Injunctions</b>	Section 40(1)(b) CA (negatory claim/injunction) and Section 40(1)(f) CA (injunction against third parties)
<b>Article 12 IPRED – Alternative measures</b>	Not transposed
<b>Article 13 IPRED – Damages</b>	Section 40 (4) CA
<b>E-Commerce Directive 2000/31/EC</b>	ISSPA
<b>Article 12/13/14 and 15 of the E-Commerce Directive</b>	Sections 3, 4, 5 and 6 of the ISSPA
<b>Articles 16 to 20 of the E-Commerce Directive</b>	Not implemented directly by the ISSPA
<b>DSM Directive EU 2019/790</b>	Not transposed as at October 2021

<sup>553</sup> Šindelka, p. 277. Polčák R. “Information Society Between Orwell and Zapata: A Czech Perspective on Safe Harbours”, in Dinwoodie G. B. (ed.), *Secondary Liability of Internet Service Providers* (online), Cham: Springer International Publishing, 2017, p. 265.

<sup>554</sup> Šindelka, p. 283.

<sup>555</sup> Telec/Tůma, p. 495-496.

## 6.6. DE – Germany – National legal summary<sup>556</sup>

### 6.6.1. General legal framework

#### 6.6.1.1. National legislation on copyright<sup>557</sup>

In Germany, the Act on Copyright and Related Rights (*Gesetz über Urheberrecht und verwandte Schutzrechte – UrhG*)<sup>558</sup> is the general act that regulates the scope and the enforcement of copyright and related rights.

On the other hand, the Collective Management Societies Act (*Verwertungsgesellschaftengesetz – VGG*)<sup>559</sup> regulates specific aspects of collective enforcement. This law empowers collective management societies to enforce the rights of authors and rightsholders, for example with regards to collective licences negotiated with users for the use of the repertoire they represent. The specific rights and obligations of publishers of music and literature are regulated by the Publishers Act (*Verlagsgesetz – Verlg*).<sup>560</sup>

In Germany, copyright infringement is considered both a criminal offence and a civil law violation. According to § 97 UrhG, whoever commits an infringement against a protected right can be required to remove the infringement or to cease and desist if there is a risk of repeated violations. Furthermore, according to § 97 section 2 UrhG, if the violation occurs as a result of purpose/intention or through negligence, the injured party may claim compensation for damages suffered as a result of the infringement. Additionally, according to § 106 UrhG, copyright infringement is also subject to criminal litigation, punishable of up to three years in prison or a monetary fine. According to § 108 UrhG, the same regulation extends to other related rights.

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<sup>556</sup> The country report on Germany incorporates the feedback received from the Copyright Unit of the Federal Ministry of Justice and Consumer Protection (Bundesministerium der Justiz und für Verbraucherschutz) during the checking round with the national competent institutions.

<sup>557</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>558</sup> Act on Copyright and Related Rights (*Gesetz über Urheberrecht und verwandte Schutzrechte*), <https://www.gesetze-im-internet.de/urhg/>

<sup>559</sup> Collective Management Societies Act (*Verwertungsgesellschaftengesetz*), <https://www.gesetze-im-internet.de/vgg/>

<sup>560</sup> Publishing Act (*Verlagsgesetz*), <https://www.gesetze-im-internet.de/verlg/BJNR002170901.html>



Increased penalties are required if the copyright infringement was committed for profit and if the infringer acted on a commercial basis, pursuant to § 108a UrhG. A commercial basis under German law entails the intention of repeated infringements of rights<sup>561</sup> with the aim of creating a stream of income that is not merely temporary. Acting for profit on a sole occasion does not therefore constitute a commercial basis. In the case of an infringement with a commercial basis, the penalty can be of up to five years in prison or a monetary fine. Besides the increased penalty for acting on a commercial basis, a profit motive can be taken into account in the judicial process when determining the punishment.

### 6.6.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

On 20 May 2021 the Federal Parliament (*Bundestag*) adopted the act that implements Directive (EU) 2019/790<sup>562</sup> on copyright and related rights in the Digital Single Market (the DSM Directive) (*Entwurf eines Gesetzes zur Anpassung des Urheberrechts an die Erfordernisse des digitalen Binnenmarktes* (19/27426)).<sup>563</sup> The act was published in the Federal Law Gazette on 4 June 2021.<sup>564</sup>

Among other things, this act introduces a separate new law, the Act on the Copyright Liability of Online Content-Sharing Service Providers (*Urheberrechts-Diensteanbieter-Gesetz*, UrhDaG), which implements Article 17 of the DSM Directive. According to § 1 UrhDaG, online content-sharing service providers perform an act of communication to the public when they give access to the public to copyright protected works uploaded by their users. Service providers are obliged to ensure the blocking or removal of infringing content as soon as rightsholders request it; this should not however result in the unavailability of legitimate content (§ 7 Urh-DaG). In the case of automated procedures, the new law provides for specific uses (including minor uses) which are presumably authorised and should not be automatically blocked (§§ 9–11 Urh-DaG). These provisions do not apply to the live transmission of sports events if the rightsholder so requests and provides necessary information (§ 7 section 2 Urh-DaG).

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<sup>561</sup> The first act can be classified as commercial if several criminal acts are intended.

<sup>562</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

<sup>563</sup> *Entwurf eines Gesetzes zur Anpassung des Urheberrechts an die Erfordernisse des digitalen Binnenmarktes* (19/27426), <https://dserver.bundestag.de/btd/19/274/1927426.pdf>.

<sup>564</sup> [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&jumpTo=bgbl121s1204.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl121s1204.pdf).



**Table 42. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	Act on Copyright and Related Rights ( <i>Urheberrechtsgesetz</i> ). Collective Management Societies Act ( <i>Verwertungsgesellschaftengesetz</i> ) Act on the Copyright Liability of Online Content-Sharing Service Providers ( <i>Urheberrechts-Diensteanbieter-Gesetz</i> ) Act on Injunctive Relief ( <i>Unterlassungsklagengesetz</i> ).
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	Intellectual Property Protection Act ( <i>Gesetz zum Schutz geistigen Eigentums</i> ) (implementing law) Act on Copyright and Related Rights ( <i>Urheberrechtsgesetz</i> )
<b>InfoSoc Directive</b>	Act on Copyright and Related Rights ( <i>Urheberrechtsgesetz</i> )
<b>E-Commerce Directive</b>	Act on Telemedia Services (or “Telemedia Act”) (applying also to all electronic information and communication services) ( <i>Telemediengesetz – TMG</i> ), as last amended by Article 3 of the Act of 12 August 2021 (BGBl. I p. 3544) <sup>565</sup>
<b>Conditional Access Directive</b>	Law on Protection of Access Control Services (providing for specific remedies against illegal access) ( <i>Zugangskontrolldiensteschutz-Gesetz – ZKSDG</i> )

Source: German response to European Audiovisual Observatory standardised survey

## 6.6.2. National rules applicable to audiovisual sports content

### 6.6.2.1. Legal definitions of “broadcaster” and “sports events organiser”

In German federal law, the definition and protection of the term “broadcaster” are provided by §2 section 1 of the State Media Treaty (*Medienstaatsvertrag*), which refers to a linear information and communication service, such as radio or television. According to this law, the act of broadcasting takes place when content is provided and transmitted to the general public – also in encrypted form or against payment – via remote communication. Three key elements are required in order to qualify as a broadcaster: the content must be addressed to the public; it must be broadcast according to a schedule; and it must be broadcast through remote technology.

<sup>565</sup> *Telemediengesetz* (TMG), <https://www.gesetze-im-internet.de/tmg/>



Although the term “broadcasting organisation” is mentioned in § 87 UrhG, according to the legal doctrine it is defined as any entity that broadcasts directly and for a certain period of time to the public. This definition is relevant to all matters concerning the infringement of broadcasters’ rights, and most broadcasters of sports events fall within this definition.

There is no legal definition of “sports events organiser” in German law.

#### 6.6.2.2. Legal protection related to sports events

The sports event itself cannot be regarded as an intellectual creation and it is therefore not protected by copyright; it is only covered by “domiciliary” rights (“*Hausrecht*”). Domiciliary rights (also referred to as “house” rights) refer to a sub-category of property rights, enabling a house owner to ban any kind of action which is being undertaken in his/her “house” (or premise).<sup>566</sup> Domiciliary rights are protected by the German Constitution on the basis of the right to inviolability of the property. Sports organisers can, for example, make use of their domiciliary rights to prohibit any activities within the organisation’s venue that may lead to an infringement of their interests (such as unwanted filming by unauthorised parties). German courts have repeatedly ruled <sup>567</sup> that sports event organisers do not enjoy any exclusive and specific protection and that they can only resort to the application of general law with regard to the protection of audiovisual sports broadcast. In practice, sports event organisers may only rely on their domiciliary rights to counter illicit recordings made on the site of the event. In other words, as the German Federal High Court of Justice (*Bundesgerichtshof* – BGH) ruled in a decision of 14 March 1990, the organiser does not assign rights when it gives permission to broadcast a sports event, but instead it allows activities which it could prohibit on the basis of its domiciliary rights.<sup>568</sup> For instance, if the recording of a sports event is done illegally, i.e. by a visitor to the sports event venue, the organiser can pursue damages only on the basis of breach of contract, which is based in its domiciliary rights.<sup>569</sup> In such

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<sup>566</sup> Sports events are usually held in dedicated venues, for example football games that take place in a stadium. The ownership of these venues generates property rights for the sport organiser. Except for top clubs that possess their own stadium, sports venues are usually owned by public local authorities, such as municipalities. The owners of the sports venues then enter into specific agreements with the sports event organisers or the clubs, which grant them the exclusive-use rights to the venue, limited, most of the time, to that specific event. The property or exclusive-use rights to sports venues are usually referred to as “house” or “home” rights. House rights vest sports event organisers with the possibility to control access to the event venue in accordance with national private law, and to set out the terms and conditions of such access. More importantly, when it comes to the media, house rights usually serve as a legal basis for sports event organisers to negotiate the conditions and rules for audiovisual production companies and broadcasters to record or broadcast the event.

<sup>567</sup> See BGH decision of 14 March 1990 6 KVR 4/88 – Sportübertragungen, published in GRUR (*Gewerblicher Rechtsschutz und Urheberrecht*) 1990, 702; BGH decision of 8 October 2010 – I ZR 60/09 – Hartplatzhelden.de, published in GRUR 2011, 436, paragraph 21.

<sup>568</sup> See footnote 8.

<sup>569</sup> Exceptions to copyright for private copies are only applicable based on copyright law.



circumstances, protection can be provided by the domiciliary right itself (§§ 903, 858, 1004 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB), tortious claims (§§ 823 section 1, and 826 BGB) or competition law (§§ 3 section 1, 4 Nos. 9 and 10 of the Act against Unfair Competition (*Gesetz gegen unlauteren Wettbewerb* – UWG)).

The relevant copyright protection for sports events therefore results from the rights attached to the audiovisual content created during the event under various provisions of national copyright law, as long as such content can be deemed to reflect a certain amount of creativity. These provisions include § 2 section 1 No. 6 UrhG (cinematographic works). The rights to the audiovisual recording are held by natural persons who take part in creating the content (i.e. filming, editing, camera angle). In most cases, the commercial rights to the usage of the content are held by the production company employing the creators, as these have transferred their exploitation rights to the company (in practice the broadcaster is also the producer of the audiovisual recording). The creators retain their moral rights to the content.

In the event that the audiovisual recording is broadcast, the general rules on the related (or “neighbouring”) rights of broadcasting organisations apply to the broadcasting of the sports event, as provided in §§ 87, 94 and 95 UrhG. These include the exclusive right to rebroadcast its broadcast and to make it available to the public; to make video or audio recordings of its broadcast; to take photographs of its broadcast; to reproduce and distribute the video; to make it available to the public. This right is transferable and the broadcasting organisation may grant to another person the right to use the broadcast in any manner of use to which it is entitled.

In the event of illegal broadcasting or illegal online transmission of a sports event, only the owner of the copyright and/or related rights can invoke § 97 UrhG to require the cessation of infringement and the damages thereby incurred, and to take legal action. With specific regard to sports events, said owners will likely be the broadcasters who obtain the rights to the recording they produce. If a broadcaster transfers its commercial rights over the content exclusively<sup>570</sup> to a third party, the new rightsholder alone is eligible to take action. If only non-exclusive rights are transferred, only the initial broadcaster is entitled to take action. However, if the licensee’s interests are affected, they may be entitled to take legal action on behalf of the rightsholder.

### 6.6.2.3. Other specific rules applicable to sports events

No other specific legal protection apply to sports events organisers in Germany. Furthermore, there are no specific rules in German law concerning the use of sports content in social media.

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<sup>570</sup> The exclusivity of the exploitation rights determines if the rightsholder may take actions against the infringement.



**Table 43. Definitions of the main concepts concerning audiovisual sports events**

Concept	Existence of a definition	Relevant rights
Broadcaster	Yes	Related rights
Sports event organiser	No	Domiciliary rights – companies are entitled to exploitation rights <sup>571</sup>

Source: German response to European Audiovisual Observatory standardised survey

## 6.6.3. Remedies and sanctions applicable in case of infringement

### 6.6.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

Sanctions, remedies and injunctions are granted in case of breach of rights under the UrhG, most of which also apply in case of online infringement of audiovisual sports content. According to § 97 UrhG, whoever infringes a protected right can be required to eliminate the infringement or to cease and desist if there is a risk of repeated infringements. Furthermore, according to § 97 Abs. 2 UrhG, if the infringement occurs by intent or by negligence, the injured party can claim compensation for the damages suffered as a result of the infringement.

Another important case of injunctive relief is the liability of “interferers” (“*Störer*”): An intermediary who does not infringe a protected right and is not liable as a participant in that infringement may be subject to injunctive relief as an “interferer” according to § 1004 BGB analog. Those interferers have in common that their services are used by a third party to infringe copyrights. The liability is limited to injunctive relief and does not include claims for damages. Generally speaking, a person who – without being a perpetrator or participant – intentionally and with an adequate causal link contributes to the infringement can be held liable for injunctive relief as long as he/she is in a position to prevent that infringement and his/her contribution constitutes a breach of conduct obligations. The scope of the conduct obligations depends on whether and to what extent the intermediary can reasonably be required to monitor and control third parties in order

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<sup>571</sup> Usually the broadcaster produces the audiovisual content and holds the exploitation rights for the content protected by copyright law, not the sports event organiser. The sport organisers hold the domiciliary rights.



to prevent infringements. The liability of interferers according to § 1004 BGB analog implements Article 8 (3) of the Info Soc Directive.<sup>572</sup>

Concerning the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive), when access to (sports) content is protected and subject to payment, such content falls within the definition of a protected service within the meaning of the Law on protection of access control services (ZKSDG), which transposes Conditional Access Directive 98/84/EC into German law.

In particular, § 3 ZKDSG prohibits the manufacture, import, or distribution of means to circumvent access-restrictions. Any infringement of the afore-mentioned provision is subject to punishment according to §§ 4, 5 ZKDSG and to one year of imprisonment or a monetary fine. Furthermore, according to § 5 ZKDSG, the installation, maintenance, possession or replacement of such means is subject to an administrative fine of up to EUR 50 000. By transposing the directive, the circumvention of access control mechanisms is also subject to the civil law under § 823 Abs. 2 of the BGB and enrichment law (§ 812). Thereby, unjust profits can be claimed by the rightsholder.

These provisions (§§ 4 and 5 ZKDG) are applicable in cases where an infringer provides means to circumvent protective measures put in place by a rightsholder (e.g. the broadcaster). For instance, a district court has ruled that it is a violation of § 3 ZKDSG if a software is provided to enable users to view encrypted content of a pay-TV provider via the internet.<sup>573</sup>

With regard to the circumvention of effective technological measures, according to national jurisdiction, violations of means of technical protections (Article 6 ISD, § 95a UrhG) do not automatically constitute a violation of protected rights and are therefore no ground for claims with regard to § 97 UrhG (right to cessation of infringement and to damages). Plaintiffs may, however, rely on unfair competition provisions such as § 3a UWG (Act against Unfair Competition), concerning the legal protection against the circumvention of any effective technological measures, to pursue their claims. This way, they can claim damages and serve a cease and desist order. Also, according to § 108b and § 111a Abs 1 No. 1 UrhG, criminal prosecution is possible.

In addition, § 7 section 4 TMG provides a right for (blocking) injunctions against access providers in cases where no other remedies are practicable. This right can be invoked to block access to websites that contain infringing sports content.

Furthermore, § 1031 section 5 of the Code of Civil Procedure (*Zivilprozessordnung* – ZPO), which transposes Article 17 of the E-Commerce Directive on out-of-court dispute settlement, only regulates the formal requirements for arbitration, which is in itself

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<sup>572</sup> For details, please see the Court of Justice of the European Union (CJEU) judgment of 22 June 2021, cases C-682/18 and C-683/18 – Peterson v. Google LLC and Elsevier Inc. v. Cyando AG.

<sup>573</sup> *Landgericht* (district court) Hamburg, decision of 26 April 2005 – 312 O 1106/04, published in ZUM (*Zeitschrift für Urheber- und Medienrecht*) 2005, 844

accessible for rightsholders of sports content (as this is a general provision concerning arbitration with consumers).

### 6.6.3.2. National bodies with competences on copyright enforcement

There is no national authority (e.g. administrative body) other than judicial bodies with competences to address copyright infringement in Germany.

### 6.6.3.3. Codes of conduct and MoU

In March 2021, internet access providers and rightsholders (including the *Deutsche Fußball Liga* – DFL) have jointly set up the Clearing House for Copyright on the Internet (*Clearingstelle Urheberrecht im Internet* – CUII),<sup>574</sup> an independent body, aimed at examining, according to objective criteria, whether the blocking of access to a copyright-infringing website is lawful. Upon request of rightsholders, the CUII initiates a review procedure to determine whether a Domain Name System (DNS) blocking may be set up for structurally copyright-infringing websites (SUW).<sup>575</sup> This is examined in a two-stage procedure:

First, a CUII review committee, consisting of three persons and chaired by renowned former judges from the BGH with legal and technical competences in copyright law,<sup>576</sup> examines the request for a DNS blocking presented by the applicant. It can make a recommendation for the blocking of a SUW, provided the requirements are met, based on the applicable laws (e.g. ensuring that the blocking would not interfere with the freedom of information of internet users) and the rulings of the BGH.<sup>577</sup> The recommendation of the review committee must be taken unanimously and only be issued in obvious cases.<sup>578</sup>

Secondly, the recommendation by the CUII review committee is followed up by an official review by the Federal Network Agency for Electricity, Gas, Telecommunications,

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<sup>574</sup> *Clearingstelle Urheberrecht im Internet* (CUII), <https://cuii.info/ueber-uns/>

<sup>575</sup> According to the CUII webpage, SUW shall be understood as referring exclusively to obvious cases of copyright-infringing websites (e.g. [thepiratebay.org](http://thepiratebay.org), [kinox.to](http://kinox.to) or [goldesel.to](http://goldesel.to)), whose offer is specifically aimed at the infringement of copyrighted works.

<sup>576</sup> The assessors are lawyers who are nominated by the rightsholders and internet access providers involved, but who are not subject to any instructions.

<sup>577</sup> According to the case law of the BGH, the assertion of claims against the internet access provider can only be considered if this priority claim lacks any prospect of success despite taking reasonable measures and therefore would otherwise create a gap in legal protection (BGH judgment of 26 November 2015 – I ZR 174/14? paragraph 83).

<sup>578</sup> Examples include [thepiratebay.org](http://thepiratebay.org), [kinox.to](http://kinox.to) or [goldesel.to](http://goldesel.to). The offer of such platforms is specifically aimed at the infringement of copyrighted works. If there is legal content on the platform, its size is not significant in the overall ratio of lawful to unlawful content (see BGH judgment of 26 November 2015 – I ZR 174/14, paragraph 55). The offerings usually have high user numbers and thus generate high advertising revenues despite their illegality – at the expense of the legal offerings of the creative industries. Each recommendation is published on the website of the CUII, here: <https://cuii.info/empfehlungen/>.



Post and Railway (*Bundesnetzagentur* - BNetzA). If the examination by the Federal Network Agency confirms that the DNS blocking is lawful under the conditions of the Net Neutrality Regulation (Regulation (EU) 2015/2120), the internet access provider (which is a member of the CUII and has adhered to it) can set up the DNS blocking without requiring a preliminary review by judges. A judicial review nevertheless remains possible for all affected parties (the internet access provider, the infringing website, the rightsholders concerned and the users who seek access).<sup>579</sup>

#### 6.6.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

The notifications, according to § 97a UrhG, are addressed to the infringer. They are not a prerequisite for asserting claims against perpetrators in court. Without a notification, the plaintiff may have to bear the costs of the court proceedings.

The actual notice and take-down procedure is a result of the liability of interferers (“*Störerhaftung*”) mentioned above and the privilege of § 10 TMG for Host-Providers.

The liability of an interferer requires a breach of conduct obligations. Since service providers are not subject to general monitoring obligations, they have to be notified of an infringement. After the notification they are obliged to stop the infringement and prevent similar ones (the scope of the duties depends on the individual case).

According to § 10 TMG, service providers are not responsible for third-party information that they store for a user, provided that they have no knowledge of the illegal act/information and, in the case of claims for damages, they are not aware of any facts or circumstances from which the illegal act/information becomes apparent. As soon as they have become aware of it, they have to act expeditiously to remove the information or to disable access to it. As a consequence, rightsholder have to notify an intermediary of the infringement if they base their claim on the interferers liability or if the provider is privileged by § 10 TMG.

The notice of infringement must be so specific that the addressee can easily identify the infringement without a detailed legal or factual examination (BGH decision of 17.08.2011 – I ZR 57/09 – *Stiftparfüm*, printed in GRUR (*Gewerblicher Rechtsschutz und Urheberrecht*) 2011, 1038). In copyright law the notification has to identify the protected work and describe the form of infringement and sufficiently clear indications of the parties' entitlement under copyright law are required ((BGH decision of 29.04.2010 – I ZR 69/08 - *Vorschaubilder*, printed in GRUR 2001, 291).

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<sup>579</sup> Users have contractual claims against their access providers if the blocking is unlawful. The CJEU emphasized the rights of internet users in the case of *UPC Telekabel*.



Larger platforms also usually have their own procedures and forms of notice and take-down, which are described in their terms of use.

#### 6.6.3.5. Removal and blocking orders

According to § 935 ZPO, preliminary injunctions can be granted if “the change in the status quo might frustrate the realisation of the right enjoyed by a party or make its realisation significantly more difficult.” For copyright related cases, this requires the plaintiff in most cases to file a notice against the infringer first according to § 97a UrhG on notification, prior to filing an injunction claim with a court. If the notice does not resolve the case, either because the infringer refuses to remove the infringing content or he/she does not reply, the case can proceed to courts.

The plaintiff is not required to prove his/her case definitively (or to provide sufficient evidence), but rather must present it conclusively and demonstrate the grounds for the claim to the satisfaction of the court.<sup>580</sup>

The grounds for a claim regarding the infringement of sports content need to meet the requirements defined in § 97 UrhG, namely that the complainant is the rightsholder and that the action in question constitutes an infringement of rights. In the case of sports events, there can be multiple rightsholders, such as the rightsholder of the broadcast itself (§ 87 UrhG) or the person who has produced an audiovisual recording of a sports event (§ 94 UrhG).

In particular, blocking injunctions against internet access providers are possible and have been used by courts. Blocking injunctions directed at internet access providers are codified in § 7 section 4 TMG. They require there to be no alternative way for the rightsholder to stop the infringement of their rights and the blocking is required to be reasonable and proportionate.

In theory, de-indexing injunctions are also possible. Such injunctions can be directed at search engine providers and have similar requirements to those of blocking injunctions (in particular, those related to the absence of any other possible remedy for the rightsholder and to the reasonableness and appropriateness of the de-indexing). However, due to the nature of search engines and the fact that there is legally no general monitoring obligation, search engine providers cannot reasonably be expected to monitor all their content. Also, unlike hosting platforms, search engines are not usually in direct contact with the uploaders of searchable content. Therefore, de-indexing measures can only apply when a precise indication of manifestly illegal content is given.

As regards online piracy of live sports events, there is no specific procedure and the regular procedure for online piracy shall apply. However, the procedural measures to remove the infringing content often cannot be executed in a timely manner and therefore often cannot hinder active live streams. Nonetheless, there are also cases in which live

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<sup>580</sup> §§ 936 and 920 section 2 ZPO.



streams that infringe broadcasters' rights have been subject to injunctions. § 97 section 1 UrhG also allows for presumptive action (i.e. an injunction) if future infringements are likely to occur (dynamic blocking injunctions in order to prevent future infringements).<sup>581</sup> This provision applies especially to shared hosting platforms, which offer infrastructures used for streaming or mirroring infringing content. Shared hosting is a service that allows customers to use the infrastructure of a company to run a web application.

The prerequisite for a claim for a blocking injunction under § 7 section 4 TMG is the infringement – the potential for infringement is not sufficient on its own – of an intellectual property right by an infringer. For this purpose, the infringer must have used a telemedia service, understood as any electronic information and communication service, in particular audiovisual and on-demand media services and audiovisual commercial communication.<sup>582</sup> While § 7 section 4 TMG in conjunction with § 8 section 3 TMG only considers Wireless Local Area Network (WLAN) providers as potential claimants, all access providers must be able to be held liable in light of an interpretation which conforms to European law. The BGH has already confirmed the extension of § 7 section 4 TMG to other kinds of access providers.<sup>583</sup> In addition, a claim is only admissible if the infringer cannot be prosecuted elsewhere. Therefore, the telemedia service only serves as a subsidiary claimant; (3). Finally, the claim has to be reasonable and proportionate (*Zumutbar und verhältnismäßig*). Since fundamental (constitutional) rights of the access provider, such as freedom of business, as well as of the infringer and the infringed party, such as freedom of speech, become relevant in this regard, this is the most crucial prerequisite. These requirements of reasonability and proportionality were first established by the BGH before being taken up by the legislator in § 7 section 4 TMG.<sup>584</sup>

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<sup>581</sup> According to the European Union Intellectual Property Office (EUIPO)'s "Study on dynamic blocking injunctions in the European Union" (March 2021), forward-looking or dynamic blocking injunctions are meant to allow flexibility so as to cover repeated infringement and thus enhance the effectiveness of the measures for rightsholders.

<sup>582</sup> "Telemedia" are defined negatively as electronic information and communication services which are neither telecommunications services within the meaning of the Telecommunications Act (transmission of signals in telecommunications systems or networks, § 3 Nos. 23 and 24 TKG) nor broadcasting services within the meaning of § 2 of the Broadcasting State Treaty (cf. § 1 of the Telemedia Act (TMG) of 26 February 2007 (BGBl. I 179) with late amendments). These are, in particular, services offered on the internet, etc. Telemedia are not subject to licensing or registration (section 4 TMG). In the case of business telemedia, which are usually offered for a fee, service providers have extensive information obligations, namely, to provide "easily recognisable, directly accessible and permanently available information" about identity, quick contact, etc. (§§ 5, 6 TMG). Regulations on responsibility for links are found in § 8 TMG, data protection in §§ 11ff. TMG. See <https://wirtschaftslexikon.gabler.de/definition/telemedien.html>. It is worth noting that the streaming of live content does not qualify as telemedia because live streaming is a so-called "linear" offer to users; only in the case of occasional streaming, not covered by the definition of "broadcasting", does the Telemedia Act still apply. Thus, it depends on each case whether a live content streaming operator can be described as telemedia or as a broadcaster.

<sup>583</sup> BGH decision of 26 July 2018 – I ZR 64/17 – Dead Island, published in GRUR 2018, 1044.

<sup>584</sup> BGH decision of 26 November 2015 – I ZR 174/14 – Goldesel. Published in GRUR 2016, 268.



In terms of the relevant procedure, the claim can be enforced both as a normal civil law action and as an injunction (§ 935 ZPO). While the claimant in general has to provide evidence for all the preconditions on which a claim is based, it is important to note that § 7 section 4 TMG provides for a secondary burden of proof.<sup>585</sup> This is due to the fact that the claimant will certainly not be able to prove any conditions which are solely within the sphere of the telemedia service. The access provider must therefore substantiate the unreasonableness of the request.

#### 6.6.3.6. Measures against end-users

Measures against end-users are not commonly employed in Germany, especially with regard to the suspension or blocking of general internet access.

Generally, data obtained by private investigators is allowed to be used to identify end-users and demand further information according to § 101 section 9 UrhG on the right to information. Courts have allowed, to a certain extent, the use of privately obtained personal data information. For instance, a screenshot of an infringer's Internet Protocol (IP) address, obtained by a private investigation firm, was accepted as evidence in court.<sup>586</sup> Also, information on specific account-identifiers used by platform users that was obtained by a private investigator, was accepted in court.<sup>587</sup>

This does, however, only apply to civil jurisdiction. Criminal investigations may not be supplemented by private entities.<sup>588</sup> Rightsholders may also request that access providers disclose identity data of infringers, § 101a UrhG.

#### 6.6.3.7. Criminal sanctions

According to § 106 UrhG, copyright infringement is also subject to criminal litigation, punishable by up to three years' imprisonment or a monetary fine. § 108 UrhG extends the same regulation to other related rights. There are no specific criminal proceedings concerning online infringement of sports content. The ordinary and standard proceedings for copyright infringement apply in these cases. According to § 109 UrhG, a criminal complaint to the prosecuting authorities is needed to launch any criminal investigation, unless the case is of public interest or the infringer is acting with commercial intent.

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<sup>585</sup> In civil law cases, the burden of proof generally is on the party(ies) asserting the claim. In this case, the burden of proof does not shift, but the other party has a duty to provide sufficient information for the first party to substantiate their submission. This is known as the "secondary burden of proof".

<sup>586</sup> BGH decision of 11 June 2015 – I ZR 19/14 – Tauschbörse I, published in GRUR 2016, 176; BGH decision of 12 May 2016 – I ZR 48/15 – Every time we touch, published in GRUR 2016, 1280

<sup>587</sup> LG (regional court) Hamburg, decision of 14 July 2020 – 310 O 339/18, published in GRUR-RS (*Gewerblicher Rechtsschutz und Urheberrecht Rechtsprechungssammlung*) 2020, 23403

<sup>588</sup> Cf. LG (regional court) Kiel, decision of 14 August 2006 – 37 Qs 54/06, published in *Neue Juristische Wochenschrift* (NJW) 2006, 3224

Thereafter, the prosecuting office opens an investigation. If the findings indicate the likelihood of a conviction, the case is brought to court. Otherwise, the case is dismissed.

**Table 44. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	§ 20c para. 3 UrhG; applicable since 7 June 2021.
Specific rules on the use of sports content in social media	No.
Specific competent bodies (other than judicial bodies)	No.
Entitlement to take legal action	Yes, the rightsholders, pursuant to § 97 UrhG.
Codes of conduct	Yes.
Specific proceedings	No.
Specific remedies	No.

Source: German response to European Audiovisual Observatory standardised survey

**Table 45. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes.
Differentiation of criminal sanctions based on acting for profit	Yes. <sup>589</sup>
Removal and blocking injunctions	Yes.
Dynamic and/or live blocking Injunctions	Yes.
De-indexing injunctions	Yes.
Damages and orders to cease and desist	Yes.

<sup>589</sup> According to § 108a UrhG, increased penalties apply if the copyright infringement was committed for profit on a commercial basis. A commercial basis under German law requires the intention to infringe rights repeatedly with the aim of creating a stream of income that is not merely temporary. In the case of an infringement on a commercial basis, the penalty can be of up to five years in prison or a monetary fine. Besides the increased penalty for acting on a commercial basis, a profit motive can be taken into account in the judicial process when determining the punishment.



Typology	Description
Administrative offence and remedies	No.
Notice and take-down procedures	Yes.

Source: German response to European Audiovisual Observatory standardised survey

## 6.6.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions in relation to online infringement of audiovisual sports content.

**Table 46. Relevant case law related to the infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
Communication to the public	After multiple complaints and requests to shut down the platform and/or not to upload illegal sports content, the provider continued to create livestreamed illegal content on the platform. The court upheld that the livestream had been illegally carried out by the platform and granted a cease and desist order due to the infringement.	Landgericht (district court) Frankfurt Decision of 23 June 2015 – 2-03 O 261/15, 2016, 67.
Hosting providers' knowledge and awareness of illegal activity	The liability exemption covers all the cases in which the provider acts with negligence: in fact, the provider must have knowledge and awareness of the illegality and of the specific content and it is not sufficient merely to have knowledge of the existence of illegal content.	German Federal High Court of Justice (BGH) Decision of 11. March 2004 – I ZR 304/01 – <i>Internet-Versteigerung</i> , 2004, 860, 864. Decision of 12 July 2007 – I ZR 18/04 – <i>Jugendgefährdende Medien bei eBay</i> , 2007, 890 para 41 ff.
Notice and take-down	Reference to the copyright infringements has to be easy to understand.	BGH Decision of 17 August 2011 – I ZR 57/09 – <i>Stiftparfüm</i> , 2012, 178.
Measures against end-users	The measures of suspending and blocking access have been applied in the following cases: - the owner of a WLAN connection is responsible as an interferer, as long as third parties have used the connection to post	BGH Decision of 12.5.2010 - I ZR 121/08 - <i>Sommer unseres Lebens</i> , 2010, 2061. Decision of 8. 1. 2014 - I ZR





Content	Substance of the decision	Decisions
	<p>copyrighted music titles in internet exchanges;</p> <ul style="list-style-type: none"> <li>- the owner of an internet connection does not satisfy its secondary burden of proof by merely claiming the theoretical possibility of access to his/her internet connection by third parties living in his/her household; the secondary burden of proof of the parent includes the identification of the child who committed the infringement;</li> <li>- in contrast, the owner of an internet connection is generally not liable as an interferer for omission, if family members (not underage) use the connection made available for them, committing violations.</li> </ul>	<p>169/12, 2014, 2360.</p> <p>Decision of 11.6.2015 - I ZR 75/14 –Tauschbörse III, 2016, 373.</p> <p>Decision of 12 May 2016 – ZR I 86/15 – Silver Linings Playbook, 2016, 1289.</p> <p>Decision of 30 March 2017 – I ZR 19/16 – Loud, 2017, 924.</p>
<b>Criminal sanctions</b>	<p>The application of sanctions is also extended to the operator of a peer-2-peer file-sharing website that also featured sports content.</p>	<p>Higher Regional Court Köln (<i>Oberlandesgericht</i>, OLG),</p> <p>Decision of 28 March 2017 – III-1 RVs 281/16 GRUR 2017, 1039</p>

Source: German response to European Audiovisual Observatory standardised survey

#### 6.6.4.1. Communication to the public

In a well-known case related to the infringement of the right of communication to the public/making content available on the internet,<sup>590</sup> the Court of Frankfurt dealt with an upstream provider, which operated a platform for livestreamed pirated sports content. After multiple complaints and requests to shut down the platform and/or not to upload illegal content, the provider continued to create livestreamed illegal content on the platform. The court upheld that the livestream had been carried out illegally by the platform and granted a cease and desist order due to the infringement.

#### 6.6.4.2. Online infringement of audiovisual sports content

With regard to the protection of sports events organisers, the BGH ruled, in a decision of 14 March 1990,<sup>591</sup> that the latter do not enjoy any exclusive and specific protection and

<sup>590</sup> Landgericht (district court) Frankfurt, decision of 23 June 2015 – 2-03 O 261/15, published in ZUM (*Zeitschrift für Urheber- und Medienrecht*) 2016, 67, <https://www.juris.de/jportal/prev/KORE520292016>.

<sup>591</sup> BGH decision of 14 March 1990 – KVR 4/88 – Sportbroadcast, in GRUR 1990, 702, <https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=14.03.1990&Aktenzeichen=KVR%204/88>.



that only the application of general law provides protection to the audiovisual sports broadcast. The organiser can exercise domiciliary rights to prohibit any activities within the organisation facilities that may lead to an infringement of their interests (such as unauthorised filming by unauthorised parties).

In addition, in a ruling of 8 October 2010,<sup>592</sup> the BGH ruled that the filming and consecutive publication of the filmed material on the internet of an amateur league football game does not violate unfair competition laws, if the filming was not locally prohibited, for example in the general terms and conditions of the access to the venue. The court, however, also considered that the assessment may differ when the unauthorised publication has the potential to inflict serious harm on any investment by the organiser. The court specifically compared the case to the broadcasting of professional sports events for which the broadcasting rights are, unlike for amateur sports, usually not free of charge.

In a more recent case, dated 7 June 2018, the Higher Regional Court of München (*Oberlandesgericht München*)<sup>593</sup> dealt with a clause in the general terms and conditions of the Bavarian football league related to the access of media representatives to the stadiums for the purpose of recording video game reports and distributing them on their own media platforms. The Bavarian football league granted access only on the condition that either a copy of the match report with transfer of all usage and exploitation rights or a general payment had been concluded with the media representatives prior to access. The court ruled, however, that this clause is not subject to content control (§307 I, II, No. 1 BGB) because the right to restrict transfer of usage and exploitation rights is part of the domiciliary rights of the stadium owner (or sports event organiser) and thus, any payment on behalf of the media company is a so-called main obligation of a media company, so that the control of standard terms and conditions does not apply.

#### 6.6.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

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<sup>592</sup> BGH decision of 8 October 2010 – I ZR 60/09 – Hartplatzhelden.de, published in GRUR 2011, 436, <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=Aktuell&Sort=12288&nr=53971&pos=0&anz=592>.

<sup>593</sup> *Oberlandesgericht* (Higher Regional Court) München, decision of 7 June 2018 – 29 U 2490/17 – *Videoberichterstattung im Amateurfußball II*, published in GRUR-RR (*Gewerblicher Rechtsschutz und Urheberrecht Rechtsprechungs-Report*) 2019, 67, <https://www.gesetze-bayern.de/Content/Document/Y-300-Z-BECKRS-B-2018-N-15564?hl=true&AspxAutoDetectCookieSupport=1>



Several case law decisions<sup>594</sup> clarified the concepts of “knowledge” and “awareness”, provided for in Article 14 of the E-Commerce Directive. According to § 10 TMG, which transposes Article 14 of the E-Commerce Directive into German law, the knowledge required of hosting providers to be liable for the illegal content on their services means actual positive human awareness of the illegal activity. The liability exemption also covers all cases in which the provider acts with negligence. In other words, the liability privilege does not apply if the service provider has actual positive human awareness of the illegal activity (i.e. the provider must have knowledge and awareness of the illegality and the specific content and it is not sufficient to have mere knowledge of the existence of illegal content). Only with regard to claims for damages the hurdle is lower and negligence is sufficient to render the privilege inapplicable. The information provided to the internet service provider (ISP) must be of such extent that the ISP can, without thorough investigation, identify the content in question. The BGH also ruled that each case can be different, and every circumstance of the case must be analysed in relation to it.<sup>595</sup>

#### 6.6.4.4. Notice and take-down requirements

No specific requirements need to be fulfilled to file a notification for copyright infringement proceedings and general rules apply, as pointed out by German case law. However, § 10 TMG provides, as mentioned before, that actual knowledge and awareness of the illegal content is accomplished when a sufficiently precise warning is given. A simple message can be sufficient if it describes the content of the information or an action with a specification of details. It is not necessary to indicate a link or an exact storage location.

In a judgment of 17 August 2011, the BGH<sup>596</sup> held that a reference to a copyright infringement is only worded specifically enough if the addressee of the notice can easily understand the legal infringement, i.e. without a detailed legal and factual review. The exact extent, however, depends on the case in question.

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<sup>594</sup> See, for example, BGH decision of 11 March 2004 – I ZR 304/01 – *Internet-Versteigerung*, published in GRUR 2004, 860, 864, <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=30359&pos=0&anz=1>; BGH decision of 12 July 2007 – I ZR 18/04 – *Jugendgefährdende Medien bei eBay*, published in GRUR 2007, 890 para 41 ff, <https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=12.07.2007&Aktenzeichen=I%20ZR%2018%20F04>;

<sup>595</sup> See BGH decision of 17 August 2011 – I ZR 57/09 – *Stiftparfüm*, published in GRUR 2011, 1038 paragraph 28 ff, <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=57743&pos=0&anz=1>.

<sup>596</sup> BGH decision of 17 August 2011 – I ZR 57/09 – *Stiftparfüm*, published in MMR (*Multimedia und Recht*) 2012, 178, <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=57743&pos=0&anz=1>.



#### 6.6.4.5. Removal and blocking orders

As mentioned earlier, the general rules concerning removal and blocking orders also apply to sports events.

The orders are addressed to the respective entity by the courts at the request of the rightsholders (i.e. the broadcaster or other licensee but not the sports event organiser, who is not a rightsholder and cannot take action under the copyright law). The blocking of specific websites is addressed to the specific ISP. The de-indexing of content is addressed to the search engine operator.<sup>597</sup>

With regard to general injunctions against illegal content online, there are several cases which are relevant to this topic, some of which can be taken as a representative example, in addition to the principles as stated by the BGH already mentioned;<sup>598</sup> as far as we can see, there are no court decisions dealing explicitly with blocking orders against access providers in the case of sports content:

In one case, the applicant requested, by way of an injunction, that the respondent be ordered to block access to the website of the provider that illegally offered a range of TV series and films. The website provided links to file-hosting services, which enabled the streaming of the films in question. The content was stored on the servers of the file-hosting services in such a way that users could, by clicking on the link, retrieve the stream for free at a time and from a place individually chosen by the user. The court ordered the respondent to block access to the website, under penalty of a fine to be set for each act of non-compliance, of up to EUR 250 000, or alternatively imprisonment in the case of non-payment, or imprisonment of up to six months, or up to two years in the case of repeated offences, with the imprisonment or alternative imprisonment in the case of non-payment to be levied on the members of the board of the respondent;<sup>599</sup>

In another case, the applicant requested the blocking of access to a site that made available to users, via different URLs, the applicant's copyright protected works without his/her consent. The Court ordered the blocking of the users' access by means of DNS blocking of the internet service which used certain URLs and certain IP addresses, insofar as the music album publications (listed by the claimant) are accessible through file sharing or shared hosting via this service.<sup>600</sup>

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<sup>597</sup> BGH decision of 27 February 2018 – VI ZR 489/16, <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=82625&pos=0&anz=1>.

<sup>598</sup> Cf. above "Removal and blocking orders", and 1.1.3.5, in particular BGH decision of 30 March 2017 – I ZR 19/16 – Loud, published in ZUM (*Zeitschrift für Urheber- und Medienrecht*) 2017, 924, <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=79771&pos=0&anz=1>.

<sup>599</sup> LG Munich I, final judgment v. 02/01/2018 – 7 O 17752/17: <https://www.gesetze-bayern.de/Content/Document/Y-300-Z-BECKRS-B-2018-N-2857?hl=true>

<sup>600</sup> LG Munich I, final judgment v. 07.06.2019 – 37 O 2516/18: <https://www.gesetze-bayern.de/Content/Document/Y-300-Z-BECKRS-B-2019-N-11911?hl=true>

For the time being, dynamic blocking injunctions have not been applied by German judges.

#### 6.6.4.6. Measures against end-users ordered by the courts

German courts have rarely applied measures against end-users, such as the suspension or blocking of general internet access. There are, however, some remarkable cases on the liability of the WLAN connection owner and/or WLAN operator, for instance:

- The BGH held, in a decision of 12 May 2010, that the owner of a WLAN connection, who failed to use the security measures commonly available on the market at the time of purchase of the WLAN router, was responsible as an interferer, as long as the third parties used the connection to post copyrighted music titles in internet exchanges.<sup>601</sup>
- In a decision of 8 January 2014, the same court held that the owner of an internet connection is generally not liable as an interferer for omission if family members (not underage) use the connection made available for them, committing violations.<sup>602</sup>
- In a decision of 11 June 2015, the BGH acknowledged that the owner of an internet connection does not satisfy its secondary burden of proof by merely claiming the theoretical possibility of access to his/her internet connection by third parties living in his/her household<sup>603</sup>.
- In a decision of 12 May 2016, the same court stated that, where there is no concrete evidence that a copyright infringement has already been committed or is imminent, the owner of an internet connection is generally not obliged to inform other family members or guests visiting his/her home, to whom he/she provides the password for his/her internet connection, about the illegality of participating in file-sharing platforms.<sup>604</sup>
- The court stated, in a decision of 30 March 2017, that the secondary burden of proof on the parents as the owners of an internet connection includes the

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<sup>601</sup> BGH decision of 12 May 2010 – I ZR 121/08 – *Sommer unseres Lebens*, published in NJW, 2010, 2061 [http://juris.bundesgerichtshof.de/cgi-](http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=52202&pos=0&anz=1)

[bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=52202&pos=0&anz=1](http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=52202&pos=0&anz=1)

<sup>602</sup> BGH decision of 8 January 2014 – I ZR 169/12 – *BearShare*, published in NJW 2014, 2360 [https://juris.bundesgerichtshof.de/cgi-](https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=67883&pos=0&anz=1)

[bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=67883&pos=0&anz=1](https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=67883&pos=0&anz=1)

<sup>603</sup> BGH decision of 11 June 2015 – I ZR 75/14 – *Tauschbörse III*, published in ZUM (*Zeitschrift für Urheber- und Medienrecht*) 2016, 373

<sup>604</sup> BGH decision of 12 May 2016 – ZR I 86/15 – *Silver Linings Playbook*, published in GRUR 2016, 1289 [http://juris.bundesgerichtshof.de/cgi-](http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=76298&pos=0&anz=1)

[bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=76298&pos=0&anz=1](http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=76298&pos=0&anz=1)



obligation to disclose the name of any adult child in their family who has admitted committing the infringement.<sup>605</sup>

#### 6.6.4.7. Compensation criteria adopted by the courts

German courts apply the general rules on compensation for damages to sports event broadcasters. These are laid down in §97 section 2 UrhG and cover the amount of the actual proven damage the rightsholder has suffered or, alternatively, either the profit made by the infringer or the hypothetical amount anyone interested in obtaining such broadcasting rights would have had to pay (statutory damages). As a general rule, there are no punitive damages under German civil law.

In particular, several court cases led to the codification of the compensation criteria (the so-called triple manner of calculation of damages, referring to the three different ways in which damages can be calculated: (i) based on actual proven damages suffered by the rightsholder; (ii) based on profit made by the infringer; (iii) based on the hypothetical amount any interested party would have paid).<sup>606</sup> The BGH considers the jurisprudence as customary law.<sup>607</sup>

Moreover, the BGH acknowledged the method of compensation by explicitly calculating a hypothetical licence fee (for the usual relevant markets) in several cases.<sup>608</sup> Often, the courts refer to the tariffs established by collecting societies in order to assess the hypothetical licence fee.<sup>609</sup>

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<sup>605</sup>BGH decision of 30 March 2017 – I ZR 19/16 – Loud, published in ZUM 2017, 924  
[https://juris.bundesgerichtshof.de/cgi-](https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=79771&pos=0&anz=1)

<sup>606</sup> BGH decision of 02 February 1995 I ZR 16/93 published in GRUR 1995, 349, 351 f. – *Objektive Schadensberechnung*

<https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=02.02.1995&Aktenzeichen=I%20ZR%2016/93>; BGH decision of 22 March 1990 I ZR 59/88, published in GRUR 1990, 1009 – *Lizenzanalogie*;  
<https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=16.11.1989&Aktenzeichen=I%20ZR%2015/88>; BGH decision of 16 November 1989 I ZR 15/88, published in GRUR 1990, 353 – *Raubkopien*;  
BGH 07 December 1979 I ZR 157/77, published in GRUR 1980, 227, 232:

<https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=07.12.1979&Aktenzeichen=I%20ZR%20157/77>

<sup>607</sup> BGH decision of 8 May 1956 I ZR 62/54, published in GRUR 1956, 427 – *Paul Dahlke*  
<https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=08.05.1956&Aktenzeichen=I%20ZR%2062/54>; BGH 29 May 1962 I ZR 132/60, published in GRUR 1962, 509, 511 f. – *Dia-Rähmchen II*:  
<https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=29.05.1962&Aktenzeichen=I%20ZR%20132/60>

<sup>608</sup>BGH decision of 22 March 1990 I ZR 59/88, published in GRUR 1990, 1080 – *Lizenzanalogie*  
<https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=22.03.1990&Aktenzeichen=I%20ZR%2059/88>

<sup>609</sup>BGH decision of 20 September 2012 – I ZR 177/11 BeckRS 2013, 04944 – *Begleitmusik zu Computerspiel*  
<https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=2012-9-20&nr=63521&pos=7&anz=20>

#### 6.6.4.8. Criminal sanctions ordered by the courts

Criminal cases related to copyright infringement are rare and amount to about 100 per year with a conviction rate of approximately 50%.<sup>610</sup> Criminal cases related to sports content infringements are even rarer. For instance, in a decision of 28 March 2017,<sup>611</sup> the OLG of Köln had to judge on the application of criminal sanctions to the operator of a peer-2-peer file-sharing website that also featured sports content (due to case-specific details, no conviction was issued).

### 6.6.5. Reports and studies

From a non-legal perspective, a study launched in 2017 by the Federal Ministry of Justice and Consumer Protection and conducted by the Max-Planck Institute for Innovation and Competition, dealt with the illegal use of copyright protected content.<sup>612</sup> The results of this study showed that about 10% of German internet users declared that they sometimes tapped into illegal material, whereas 5% reported consuming only illegal content. The study also showed that the majority of these consumers are male and young.

At this point in time, there are no studies or reports regarding the technologies and business models used for illegal streaming of sports content. Regarding the legal offer of online sports content, a study by the Media Concentration Commission (*Kommission zur Ermittlung der Konzentration im Medienbereich*) covers a broad spectrum of issues, including a detailed report on the diversity of sports content.<sup>613</sup> The study finds that “the competition for attractive sports rights has intensified considerably with the increase in sports niche programmes and sports offerings from online platforms”. However, it also finds that rights are mostly held by a few large companies that are able to afford the high prices for the broadcasting of sports rights.

In Germany, awareness campaigns have been organised by various groups. For instance, the “Out of money” campaign was conducted in 2012 and included several prominent German actors who wanted to raise awareness regarding the effects of online

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<sup>610</sup> For the most recent relevant data see the criminal statistics, available at [https://www.statistischebibliothek.de/mir/receive/DEHeft\\_mods\\_00128324](https://www.statistischebibliothek.de/mir/receive/DEHeft_mods_00128324).

<sup>611</sup> OLG Köln, 28 March 2017 – III-1 RVs 281/16 GRUR 2017, 1039, <https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=OLG%20K%F6ln&Datum=28.03.2017&Aktenzen=1%20RVs%20281%2F16>

<sup>612</sup> A brief description of this study: <https://www.ip.mpg.de/en/projects/details/the-use-of-copyright-protected-creative-online-content-by-german-consumers.html>

<sup>613</sup> An English summary of the results of this study can be found at: [https://www.kek-online.de/fileadmin/user\\_upload/KEK/Publikationen/Medienkonzentrationsberichte/Sechster\\_Konzentrationsbericht\\_2018/KEK\\_KB\\_2018\\_The\\_Results\\_at\\_a\\_Glance.pdf](https://www.kek-online.de/fileadmin/user_upload/KEK/Publikationen/Medienkonzentrationsberichte/Sechster_Konzentrationsbericht_2018/KEK_KB_2018_The_Results_at_a_Glance.pdf).



piracy on protected content. As a result of this campaign, a movie was released under the title “UFA Antipiraterie – Die Filmkiller”.<sup>614</sup>

Another awareness campaign which related more broadly to general copyright infringement was entitled “Raubkopierer sind Verbrecher” and launched in 2003. This campaign featured several videoclips that showed potential negative consequences of copyright infringement. The clips were frequently played before movies in cinemas and on DVDs.<sup>615</sup>

Some associations are engaged in the field of copyright protection and frequently address the issue of online piracy of audiovisual sports content as well. For instance, the “Society for the Prosecution of Copyright Infringement” (*Gesellschaft zur Verfolgung von Urheberrechtsverletzungen* – GVU)<sup>616</sup> used to represent the interests of international corporations throughout the entertainment industry, including companies such as Sky Germany or the DFL<sup>617</sup>. However, following an ongoing loss of members, the GVU declared bankruptcy in early 2020 and the international “Alliance for Creativity and Entertainment”<sup>618</sup> (ACE) took its place together with the UK-based “Audiovisual Anti-Piracy Alliance” (AAPA).<sup>619</sup>

The DFL<sup>620</sup> also actively fights copyright infringements through private service providers, such as Athletia Sports GmbH. This company offers a variety of services including monitoring potential copyright infringements on behalf of several professional European sports organisations (e.g. the European Handball Federation, the Deutsche Tourenwagen Masters (DTM) or the International Basketball Federation (FIBA). In 2019, Athletia and the DFL established a joint venture called “ryghts”, specifically aiming to prevent online piracy of Bundesliga matches.

### 6.6.6. Data compilation

This country report is based on data compiled by Gerald Spindler, Professor of Civil Law, Commercial and Economic Law, Comparative Law, Multimedia and Telecommunication Law at the University of Goettingen, Faculty of Law, Department of commercial and multimedia law, in Germany.

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<sup>614</sup> [https://www.crew-united.com/en/UFA-Antipiraterie-Die-Filmkiller-Internetfilm\\_163562.html](https://www.crew-united.com/en/UFA-Antipiraterie-Die-Filmkiller-Internetfilm_163562.html)

<sup>615</sup> <https://www.youtube.com/watch?v=FLS5JiTzJw8>.

<sup>616</sup> [www.gvu.de](http://www.gvu.de).

<sup>617</sup> *Deutsche Fußball Liga* – the association founded between Germany’s professional football teams.

<sup>618</sup> <https://www.alliance4creativity.com/>.

<sup>619</sup> <https://www.aapa.eu/>.

<sup>620</sup> <https://www.dfl.de/de/>.





## 6.6.7. Annex

**Table 47. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive 98/84/EC</b>	Access Control Service Protection Act ( <i>Zugangskontrolldiensteschutz-Gesetz</i> , ZKDSG) <sup>621</sup>
<b>Article 5 of Conditional Access Directive 98/84/EC – Infringing activities</b>	<p>§ 3 ZKDSG rephases slightly Article 4 of Directive 98/84/EC. Any infringement of the regulation is subject to punishment according to § 4 and § 5. In the event of the manufacture, import or distribution of an illicit device designed to circumvent access-restriction, the offender is punishable by up to one year in prison or a monetary fine (§4 ZKDSG).</p> <p>In accordance with §5 ZKDSG, the installation, maintenance, possession or replacement of such illicit devices is subject to an administrative fine of up to EUR 50 000.</p> <p>The circumvention of access control mechanisms is also punishable under the civil law, according to §823 BGB and under the enrichment law, in accordance with §812 BGB.</p>
<b>InfoSoc Directive 2001/29/EC</b>	Copyright and Related Rights Act ( <i>Gesetz über Urheberrecht und verwandte Schutzrechte</i> , UrhG) <sup>622</sup>
<b>Article 6 InfoSoc – Obligations as to technological measures</b>	<p>§95a UrhG – Protection of technological measures – Article 6 of the ISD was transposed almost verbatim.</p> <p>In German national law, an infringement of technological measures is not an infringement per se of protected rights, pursuant to §97 UrhG.</p>
<b>Article 8 InfoSoc paragraph 1 and paragraph 2 – Sanctions and remedies</b>	§ 97 UrhG – Right to request termination of the infringement and damages (in this respect, the directive was not transposed, as § 97 already provided remedies for copyright infringements).
<b>Article 8 paragraph 3 InfoSoc – Sanctions and remedies</b>	§ 7(4) TMG (only applies to access providers) and § 97 UrhG (requires an infringement of exploitation rights) and the liability to cease and desist because of a breach of duty of care ( <i>Störerhaftung</i> ) § 1004 BGB analog.

<sup>621</sup> *Zugangskontrolldiensteschutz-Gesetz* (ZKDSG – Access Control Service Protection): <http://www.gesetze-im-internet.de/zkdsg/>

<sup>622</sup> *Gesetz über Urheberrecht und verwandte Schutzrechte* (UrhG): [https://www.gesetze-im-internet.de/englisch\\_urhg/index.html](https://www.gesetze-im-internet.de/englisch_urhg/index.html); German Telemedia Act (TMG – there is no English version available)



EU directives	National law
IPRED 2004/48/EC	Intellectual Property Protection Act ( <i>Gesetz zum Schutz geistigen Eigentums</i> ) (implementing law)  Act on Copyright and Related Rights ( <i>Urheberrechtsgesetz</i> ) <sup>623</sup> and other specific acts
Article 6 IPRED – Evidence and Article 7 IPRED – Measures for preserving evidence	§ 101a UrhG – Entitlement to presentation and inspection
Article 8 IPRED – Right of information	§ 101 UrhG – Right of information
Article 9 IPRED – Provisional and precautionary measures	Only 9 section 2 was transposed § 101b UrhG – Securing claims for damages
Article 10 IPRED – Corrective measures	§ 98 UrhG – Claim to destruction, recall and release of copies
Article 11 IPRED – Injunctions	The content of this provision already existed in German national law.
Article 12 IPRED – Alternative measures	This provision was not transposed (in this case, the transposition was optional).
Article 13 IPRED – Damages	The content of this provision already existed in German national law.
E-Commerce Directive 2000/31/EC	German Telemedia Act ( <i>Telemediengesetz – TMG</i> )
Article 12-15 E-Commerce Directive – Liability of intermediary service providers	§§ 7–10 TMG
Article 17 E-Commerce Directive – Out-of-court dispute settlement	§ 1031 section 5 ZPO – which regulates only formal requirements for arbitration, which in itself is accessible for rightsholders in sports content.
Art 20 E-Commerce Directive – Sanctions	§ 16 TMG – this provision is not applicable in a case concerning online infringement; instead, it regulates the application of fines in certain cases of violation of the TMG, and specifically, cases in which there is an administrative offence.
DSM Directive EU 2019/790	The Federal Parliament ( <i>Bundestag</i> ) adopted, on 20 May 2021, the act that implements Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (DSM Directive) ( <i>Entwurf eines Gesetzes zur Anpassung des Urheberrechts an die Erfordernisse des digitalen Binnenmarktes (19/27426)</i> ). The new act encompasses a specific act which implements Article 17 of the DSM Directive in a new stand-alone law that is called the Copyright Service Provider Act ( <i>Urheberrechts-Diensteanbieter-Gesetz, Urh-DaG</i> ). § 1 Urh-DaG-E states that

<sup>623</sup> *Urheberrechtsgesetz* (Act on Copyright and Related Rights):  
[https://www.gesetze-im-internet.de/englisch\\_urhg/index.html](https://www.gesetze-im-internet.de/englisch_urhg/index.html)



EU directives	National law
	<p>from now on, in certain cases, platforms themselves are making content available to the public even if their users uploaded the content and are therefore liable in cases of copyright infringements. Under the new law, platforms in the scope of the Urh-DaG that allow users to upload infringing sports content – which falls under copyright law – will at first be considered an infringer and therefore will be subject to claims under § 97 UrhG.</p>



## 6.7. DK – Denmark – National legal summary<sup>624</sup>

### 6.7.1. General legal framework

#### 6.7.1.1. National legislation on copyright<sup>625</sup>

In Denmark, the Consolidated Act No. 1144 on Copyright of 23 October 2014 (*Bekendtgørelse af lov om ophavsret*, LBK nr 1144 – the Copyright Act)<sup>626</sup> is the general act that regulates the scope and the enforcement of copyright and related rights. The Copyright Act regulates criminal sanctions (section 76-80); damages and compensation (section 83); the destruction of infringing products (section 84); and the publication of judgments (section 84a).

On the other hand, the Administration of Justice Act (*Retsplejeloven, lovbekendtgørelse nr. 1835 of 15 September 2021*)<sup>627</sup> provides for interlocutory injunctions (sections 411-430); the preservation of evidence (section 653-653d); the right of information (section 306-307).

In Denmark, copyright infringement is considered both a criminal offence and a civil law violation. In all cases of infringement, the full scope of civil law sanctions and remedies are available. Danish copyright law does not provide for administrative fines in relation to copyright infringement. The Copyright Act includes penal sanctions which require intent or gross negligence on the part of the infringer. In particularly aggravating circumstances, the criminal sanctions of section 299b of the Penal Code can be applied. However, the imposition of criminal sanctions in cases of copyright infringement is relatively rare.

Danish law establishes a differentiation for crimes based on acting for profit. Thus, particularly aggravating circumstances are deemed to exist especially where the offence is commercial, concerns production or distribution of a considerable number of copies, or where works, performances or productions are made available to the public in such a way that members of the public may access them from a place and at a time individually

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<sup>624</sup> The country report on Denmark incorporates the feedback received from Jesper Diernisse Langsted (Ministry of Culture) during the checking round with the national competent institutions.

<sup>625</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>626</sup> [https://english.kum.dk/fileadmin/KUM/Documents/English%20website/Copyright/Act\\_on\\_Copyright\\_2014\\_Lovbekendtgørelse\\_nr.\\_1144\\_ophavsretsloven\\_2014\\_engelsk.pdf](https://english.kum.dk/fileadmin/KUM/Documents/English%20website/Copyright/Act_on_Copyright_2014_Lovbekendtgørelse_nr._1144_ophavsretsloven_2014_engelsk.pdf).

<sup>627</sup> <https://www.retsinformation.dk/eli/lta/2021/1835>.

chosen by them (section 76(2)). Similar criminal provisions are found in section 77 of the Copyright Act in respect of imported goods that infringe related rights.

### 6.7.1.2. Transposition of EU directives

This section aims at highlighting the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>628</sup> has not been fully transposed to the date (as at September 2021). Articles 15 and 17 of the DSM Directive have been transposed as of June 2021.

**Table 48. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	Articles 15 and 17 transposed in June 2021
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	Copyright Act
<b>Information Society (InfoSoc) Directive</b>	Copyright Act Administration of Justice Act
<b>E-Commerce Directive</b>	e-Commerce Act ( <i>E-handelsloven, LOV nr 227 af 22/04/2002</i> ) <sup>629</sup>
<b>Conditional Access Directive</b>	Radio and Television Act ( <i>Radio- og tv-loven, lovbekendtgørelse nr 1350 af 04/09/2020</i> ) <sup>630</sup>

Source: Danish response to European Audiovisual Observatory standardised survey

<sup>628</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

<sup>629</sup> <https://www.retsinformation.dk/eli/lta/2002/227>.

<sup>630</sup> <https://www.retsinformation.dk/eli/lta/2020/1350>.



## 6.7.2. National rules applicable to audiovisual sports content

### 6.7.2.1. Legal definitions of “broadcaster” and “sports event organiser”

There is no legal definition of the term “broadcaster” in Danish law. However, the legal concept of a broadcaster is used – for example in section 69 of the Copyright Act that regulates related rights. Furthermore, there is no legal definition of “sports event organiser” in Danish law.

### 6.7.2.2. Legal protection related to sports events

The sports event itself is not protected by copyright or related rights under Danish copyright law, as it is not considered as an intellectual creation. There are no statutes that specifically regulate matters regarding venue hire or event organisation, except the Act on Safety at Certain Sporting Events (which mainly applies to professional football matches, but its scope can be extended to other sports events). Instead, organising and conducting sports events in reality involves the formation of a large number of legal relationships and agreements, including but not limited to agreements on venue, conditions of participation, participants’ fees or prizes, and spectator access.

The Danish Supreme Court has confirmed in two judgments the non-statutory protection of organisers in relation to sports events. More precisely, the court highlighted that the protection granted to sports organisers is not based on copyright law but derives from private contract between parties (i.e. other laws may intervene that relate to contracts and market practices, such as unfair competition law and general rules related to market practices). For example, in *Ugeskrift for Retsvæsen* (1982.179/2 H), the court held that, on the basis of non-statutory legal principles, the Danish association of soccer teams (*Dansk Boldspil-Union*) in its capacity as organiser of soccer matches in the Danish league has the right to prevent radio and television stations from reporting the current score of soccer matches until the matches have ended, irrespective of how the information on the current score has been provided. The Supreme Court further ruled, in *Ugeskrift for Retsvæsen* (2004.2945 H), that the right to information on the current scores of soccer matches before the matches have ended cannot be invoked against third parties if the information on the current scores has already been made publicly available under an agreement with the rightsholders. The Supreme Court found that sports organisers have proprietary rights (i.e. house rights) protected under non-statutory law. While the house right gives sports organisers a right to information, the court in *Ugeskrift for Retsvæsen* (2004.2945 H) restricted the right to the information in question compared to *Ugeskrift for Retsvæsen* (1982.179/2 H).

Although there is no specific protection in Denmark for sports events organisers under copyright law, the audiovisual recording of the event may be considered as a copyrightable work if it reflects some creativity (e.g. filming, editing, camera angle). In

such a case, moral and economic rights attached to the work shall initially belong to the author, as original creator. In the case of audiovisual works, the economic rights belonging to the author are usually transferred to the producer of the work, unless otherwise prescribed by contract.

In practice, audiovisual recordings of sports events will also benefit from the protection of related (or “neighbouring”) rights granted to producers, according to section 67(1) of the Copyright Act on producers of recordings of moving pictures, which stipulates as follows:

*Recordings of moving pictures may not without the consent of the producer be reproduced or made available to the public until 50 years have passed from the end of the year in which the recording was made. If a recording of moving pictures is published or communicated to the public within this period, the protection shall last until 50 years have passed after the end of the year of first publication or communication to the public, whichever is the earlier.*

It is to be noted that broadcasters generally act as producers of the audiovisual content and will therefore hold the related rights of producers over the audiovisual recording. In addition, when such recording is broadcast, the general rules on the related rights of broadcasters apply to the broadcasting of the sports event, as defined in section 69 of the Copyright Act. Related rights of broadcasters include the exclusive right to authorise or prohibit the retransmission and the recording of their broadcast, its reproduction and communication to the public. Section 69 of the Copyright Act also covers the online transmission of broadcasts, and thus also sports events broadcasts.

In the case of infringement of broadcasting or online transmission of a sports event, legal capacity will depend on the right that is subject to the legal action. The premise is that only the rightsholder is entitled to take legal action. If the right to an audiovisual recording is claimed to have been infringed (section 67 Copyright Act), the producer is entitled to take legal action; if the claim refers to a right related to the broadcast, the broadcaster has legal capacity; if more rights (e.g. licensee rights) are claimed to have been infringed, all affected rightsholders are entitled to take legal action. Sports organisers as such would not be able to take legal action, unless they are also rightsholders to the infringed rights (e.g. if they hold rights in the audiovisual recording or in the broadcast).

### 6.7.2.3. Other specific rules applicable to sports events

No other specific legal protection under copyright law applies to sports events in Denmark. There are no specific rules about the use of sports content in social media in Denmark.



**Table 49. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
Broadcaster	No	Related rights
Sports event organiser	No	Non-statutory rights

Source: Danish response to European Audiovisual Observatory standardised survey

### 6.7.3. Remedies and sanctions applicable in the event of infringement

#### 6.7.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning the online piracy of audiovisual sports content.

Ordinary civil law sanctions and remedies are available in cases concerning online piracy of audiovisual sports content, as in all other cases concerning civil claims. All measures regarding evidence, preservation of evidence, provisional and precautionary measures, corrective measures, injunctions, damages, legal costs, publication of judicial decisions, right of information are provided in the Copyright Act and the Administration of Justice Act.

In particular, section 83 of the Copyright Act on damages and compensation provides that anyone who with intent or by negligence violates any of the provisions of sections 76 and 77 shall pay (i) reasonable remuneration to the infringed party for the exploitation; (ii) damages to the infringed party for any additional damage caused by the violation. When setting the damages, consideration shall be given to such matters as the infringed party's loss of profits and the offender's unfair profits. Compensation can also be applied to the infringed party for non-financial damage. Section 83 is only applicable if the content comprises copyrightable subject matter. If not, the plaintiff can only claim damages for actual loss. The liability standard is unaffected by the content being copyrightable.

Concerning the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive), section 75c–75e of the Copyright Act provides for the prohibited acts, subject to ordinary civil law sanctions and remedies as well penal sanctions according to section 94 of the Radio and Television Act (which was introduced when implementing the Conditional Access Directive). Prohibited acts under section 75c–75e of the Copyright Act, are as follows:

- (1) It is not permitted to enable circumvention of effective technical measures without the consent of the rightholder; (2) it is not permitted to produce, import, distribute, sell, rent,*





*advertise for sale or rental of or to possess commercial devices, products or components that (i) are promoted, advertised or marketed for the purpose of circumvention of effective technical measures; (ii) have only a limited commercially significant purpose or use other than to circumvent effective technical measures; or (iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of effective technical measures.*

In addition, it is not permitted without the consent of the rightsholder to:

- (i) Remove or alter any electronic rights-management information; or*
- (ii) Distribute, import for distribution or communicate to the public works and performances or productions, etc. from which electronic rights-management information has been removed or altered without consent.*

All existing Danish provisions on penal sanctions, such as damages and compensation, destruction of infringing copies, interlocutory injunctions or preservation of evidence apply also to such cases.

#### 6.7.3.2. National bodies with competences on copyright enforcement

In Denmark, there is no national authority other than judicial bodies with specific competences to address copyright infringements.

#### 6.7.3.3. Codes of conduct and Memorandums of Understanding

A code of conduct for handling decisions on blocking access to services infringing intellectual property rights<sup>631</sup> was concluded in May 2020 between the association representing the telecommunications industry (*Teleindustrien*, TI),<sup>632</sup> on behalf of its members and the association representing rightsholders, the Danish Rights Alliance (*Rettighedsalliancen*) at the invitation of the Ministry of Culture. This code updates and revises a previous code which had been in place since 2014, to reflect the evolution of internet piracy and anti-piracy practices. The code of conduct defines the conditions of voluntary website blocking by Danish Internet Service Providers (ISPs).<sup>633</sup> In the event that one ISP is ordered by a court decision or by an order from a regulatory body to block access to a copyright infringing website, the participating ISPs commit themselves to

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<sup>631</sup> Code of conduct for handling decisions on blocking access to services infringing intellectual property rights, concluded between the Telecom Industry Association (TI) and the Danish Rights Alliance, revised edition 18 May 2020,

[https://rettighedsalliancen.com/wp-content/uploads/2020/11/CoC\\_ENG.eksl\\_Anneks.pdf](https://rettighedsalliancen.com/wp-content/uploads/2020/11/CoC_ENG.eksl_Anneks.pdf).

<sup>632</sup> <https://www.teleindu.dk>.

<sup>633</sup> <http://www.teleindu.dk/wp-content/uploads/2014/10/TI-code-of-conduct-blokeringer.pdf>.



implement the blocking within seven working days after the notification from the plaintiff. The code of conduct aims to ensure that blockings can be extended to include other websites in the case that the infringing site changes its domain name (dynamic blocking).

The code of conduct sets out a number of provisions, which aim at setting up a one-stop-shop for website blocking at Domain Name System (DNS) level and provides for a detailed procedure to that end. As a starting point, a rightsholder, represented by the Rights Alliance goes to the courts/authorities with a claim for the blocking of a specific website or service with associated website(s), due to a rights infringement. The Rights Alliance must try to contact the service concerned and inform them about the case. If a court/relevant authority accepts the claim and issues a blocking order against a selected TI member (or Danish ISP), the Rights Alliance will forward the decision to the TI Secretariat. Immediately thereafter, the TI will communicate the decision to TI members who, on the basis of this, will initiate DNS blocking of website addresses, as designated and disseminated by the Rights Alliance, as soon as possible and no later than seven working days after the TI has received the request from the Rights Alliance. The ISPs do not make their own assessment of whether the DNS addresses in question are covered by the court/authority decision.

The communication on the blocked websites will be based on and refer to the platform developed in the joint effort involving collaboration between the Ministry of Culture, the TI, the Rights Alliance and Danish industry with the name Share with Care<sup>634</sup> so that ISPs continuously ensure that the latest version of the communication is used.

Likewise, when website addresses providing access to a service are DNS blocked on the basis of a decision as described above, TI members will block additional website addresses, if the rightsholder, represented by the Rights Alliance, guarantees that these website addresses also provide access to the service covered by the prior court/authority decision. The Rights Alliance undertakes to detect and monitor which website addresses provide access to a service that is affected by a decision. At the same time, the Rights Alliance undertakes to notify the TI explicitly regarding which website addresses to block.

The code of conduct is a voluntary agreement and does not preclude a TI member from reserving the right to try the case separately if deemed necessary.

In addition, in 2019, the Rights Alliance entered into a similar code of conduct on blockings with the Association of Danish Antennas Networks (*Forenede Danske Antenneanlaeg*), which also represents a number of ISPs, which means that the blocking currently covers more than 95% of all Danish internet users.

An important component of combating rights infringements on the internet is to stop direct and indirect cash flow for illegal activities, also known as the “follow-the-money” approach. During a 2017 Ministry of Culture dialogue forum, the Danish Rights Alliance also established cooperation and agreement with advertisers and payment

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<sup>634</sup> [www.sharewithcare.dk](http://www.sharewithcare.dk).

service providers, where advertisers and payment service providers committed themselves to block advertisements on and payments to websites that, according to a legal decision, are deemed illegal. The cooperation has thus far resulted in an instrument called 'Adkodex' – collaborative list of internet sites offering illegal services – and a proposal for a document called 'Paykodex', whereby the signatories commit themselves to stop transactions to websites that appear on a list of illegal services, thus cutting the cash flow to the criminal services.

#### 6.7.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

There are no statutory provisions on notice and take-down/stay-down (NTD) procedures in Danish law – except those listed in section 52c of the Copyright Act transposing Article 17 of the DSM Directive. As a premise, intermediaries can design NTD procedures however they like. NTD/stay-down procedures shall be evaluated under sections 14-16 of the e-Commerce Act, which are very similar to Articles 12-14 of the E-Commerce Directive.

As explained above, a code of conduct between the telecommunications industry and rightsholders provides for an NTD procedure (see details in section 6.7.3.3.). According to the procedure foreseen, the blocking is based on a notification by rightsholders represented by the Rights Alliance, which commits to inform the service (if contact information is explicitly stated on the service). The notification must contain information that the service infringes copyright and that the service and its associated website address(es) will therefore be brought before the court with a request for an order that results in the blocking of the service's website address(es).

#### 6.7.3.5. Removal and blocking orders

Injunction procedures in the event of online piracy of audiovisual sports content are not different to other injunction procedures. The general rules on preliminary injunctions, as provided in sections 413-414 of the Administration of Justice Act, constitute the legal basis for blocking orders.

According to section 413:

- (1) A prohibitory or mandatory injunction may be granted if the party applying for the injunction proves on a balance of probabilities or by clear and convincing evidence:*
- (i) that the party holds the right for which protection by way of a prohibitory or mandatory injunction is sought;*
  - (ii) that the conduct of the opposing party necessitates the granting of the injunction; and*



*(iii) that the ability of the party to enforce his/her right will be lost if the party has to await a full trial.*

According to section 414:

*(1) No prohibitory or mandatory injunction may be granted if the general provisions of this Act on penalty and compensation and any security offered by the opposing party are deemed to provide adequate protection to the party.*

*(2) The court may refuse to grant a prohibitory or mandatory injunction if such injunction would cause the opposing party to suffer a detriment or disadvantage which is clearly disproportionate to the party's interest in obtaining the injunction.*

In principle, preliminary injunctions (blocking, dynamic, de-indexing) can be awarded pursuant to sections 413 and 414 of the Administration of Justice Act. Blocking injunctions have been awarded a number of times by Danish courts and are considered uncontroversial. They may also be granted in the case of online piracy of audiovisual sports content, provided the listed conditions are satisfied. There is no reported Danish case law on de-indexing injunctions but there is no reason to believe that such an injunction will not be granted if the ordinary conditions for preliminary injunctions are satisfied.

A request for an injunction shall be specific and precise, otherwise, it will be rejected. In practice, it may hence be difficult to obtain a dynamic injunction as the required level of specificity and precision of the request may be difficult to fulfil.<sup>635</sup>

There is no Danish case law on whether the scope of an injunction can be extended to redirect and mirror websites. It is possible that such an injunction can be awarded if the prohibited injunction in the request can be described with sufficient precision.

In terms of procedure, the application for an injunction is heard at a court hearing where the necessary evidence must be produced. The court may preclude evidence which is deemed to be incompatible with the interest of proceeding with the application. Where possible, the court will notify the opposing party of the time and place of the hearing. Notification may be omitted, however, if the court has no reservations about holding the hearing without prior notification of the opposing party or if the purpose of the prohibitory or mandatory injunction may be deemed to be lost if the opposing party is notified. If the party to whom the application for an injunction applies does not attend, the application may be granted if it is sufficiently justified by the statement of the facts

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<sup>635</sup> In the Commercial and Maritime Court's order of 17 November 2015, the owners of copyrights in design furniture requested the court to grant an injunction against a telecommunications company for blocking access to an English website that offered for sale replica furniture that was legally produced and sold in England but infringed copyrights in Denmark. The website included a Danish language version and arranged for transportation to buyers in Denmark. It had previously been established by the court that the website infringed copyrights in Denmark. However, subsequently, the website made some amendments in respect of delivery to Danish buyers. Based on the amendments, the preliminary injunction against the telecommunications company was denied.

and any other information available to the court and the party has been duly summoned or notification has been omitted (cf. sections 417-418 of the Administration of Justice Act). When a preliminary injunction is granted, it can be carried out by the bailiff's court.

#### 6.7.3.6. Measures against end-users

The courts allow the collection of personal data by private entities to identify the end-users committing violations. In particular, rightsholders may request log information from telecommunications companies that connect specific Internet Protocol (IP) numbers to illegal downloads, streaming, etc. The probative value of such information is, however, disputed.

There are no examples of judicial bodies blocking or suspending end-users' internet access. In cases against end-users, the measures are prohibition, damages and criminal sanctions.

#### 6.7.3.7. Criminal sanctions

If the audiovisual sports content includes copyrightable subject matter, legal proceedings in respect of violations listed under section 76(2) of the Copyright Act concerning intentional violation of copyright under particularly aggravating circumstances, are subject to public prosecution. However, in these cases, legal proceedings shall only be instituted at the request of the aggrieved party, unless the public interest requires legal proceedings. If so, the state prosecutor initiates proceedings on his/her own initiative (section 82 of the Copyright Act). In practice, the request for public prosecution takes the form of a police notification. The State Prosecutor for Serious Economic and International Crime has a special task force dealing with cases concerning intellectual property rights, including cases of online piracy of audiovisual sports content. This task force focuses on organised and systematic IP crime and makes the presence of the police visible on the internet.

Legal proceedings in respect of audiovisual sports content that does not include copyrightable subject matter and is litigated under the provision of the Penal Code or the penal provision in section 94 of the Radio and Television Act, is initiated by the state prosecutor, often after notification from the rightsholders.

The organisation known as the Danish Rights Alliance,<sup>636</sup> an interest group that fights against online piracy of protected works and organised IP crime, assists authorities and the state prosecutor's IP task force by guiding and consulting in connection with investigations, etc. The organisation hampers traffic and cash flow to illegal services and

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<sup>636</sup> <https://rettighedsalliancen.com/>.



takes legal proceedings against the criminal offenders behind such activity, through political and legal measures.

In terms of sanctions, the Copyright Act provides for criminal sanctions, in cases where there is intent or gross negligence on the part of the infringer. In particularly aggravating circumstances, the criminal sanctions of section 299b of the Penal Code can be applied, which provides that:

*(...) any person who, for the purpose of obtaining for himself or for others an unlawful gain or who otherwise under particularly aggravating circumstances commits copyright infringements of a particularly serious nature, cf. section 76(2) of the Copyright Act, or unlawful import of a particularly serious nature, cf. section 77(2) of the Copyright Act, shall be liable to imprisonment for any term not exceeding six years.*

Besides, section 76(2) of the Copyright Act stipulates that in the case of infringement, the punishment may under particularly aggravating circumstances be increased to imprisonment by one year and six months, unless a more severe punishment is provided by section 299b of the Penal Code.

**Table 50. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No, Copyright Act
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial bodies)	No
Entitlement to take legal action	Yes, rightsholders (e.g. producers, broadcasters)
Codes of conduct	Yes
Specific proceedings	No
Specific remedies	No

Source: Danish response to European Audiovisual Observatory standardised survey

**Table 51. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	Yes
Removal and blocking injunctions	Yes
Dynamic and/or live blocking injunctions	Yes

Typology	Description
De-indexing injunctions	Yes
Damages and orders to cease and desist	Yes
Administrative offence and remedies	No
Notice and take-down procedures	Yes

Source: Danish response to European Audiovisual Observatory standardised survey

## 6.7.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions in relation to online infringement of audiovisual sports content.

**Table 52. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
<b>Communication to the public</b>	The court granted a blocking injunction against a telecommunications company for blocking access to a website that streamed La Liga soccer matches without authorisation (for violation of the right of communication to the public and related rights attached to the audiovisual recording, pursuant to section 67 of Copyright Act).	Eastern Court of Appeal <i>Ugeskrift for Retsvæsen 2020.3122</i> Ø
<b>Hosting providers' knowledge and awareness of illegal activity</b>	The court gave a judgment in favour of a telecommunications company in a case involving defamatory content on a website, by considering that the telecommunications company had arranged for adequate examination of the website's legality.	Eastern Court of Appeal Judgment of 31 January 2008
<b>Notice and take-downs</b>	N/A	N/A
<b>Measures against end-users</b>	N/A	N/A
<b>Criminal sanctions</b>	A penalty of one year's imprisonment for a person who made a profit over three years and who possessed, distributed and made changes to decoders and other decoding devices for the purpose of providing unauthorised access for at least 300 persons to coded television programmes.	<i>Retten i Sønderborg</i> – judgment of 31 January 2013

Source: Danish response to European Audiovisual Observatory standardised survey



#### 6.7.4.1. Communication to the public

In the case reported in *Ugeskrift for Retsvæsen* (2020.3122 Ø),<sup>637</sup> the Danish Rights Alliance requested that the Eastern Court of Appeal, on behalf of the sports organiser La Liga – as owner of the exclusive rights to the productions of the football matches and as holder of the rights attached to the recordings thereof – issue a preliminary injunction against a telecommunications company for blocking access to a website that streamed La Liga soccer matches without authorisation. The court carried out an overall assessment of the broadcast of the football matches to assess whether it could be granted copyright protection based on the case law of the Court of Justice of the European Union (CJEU) (C-403/08 and C-429/08 – Football Association Premier League e.a.). The court considered that La Liga has drawn up guidelines concerning the expression and particular characteristics of the broadcasts of the football matches in question, and that various elements are used (including the logo and the continuous reproduction of the highlights of the match in a carefully edited version, as well as the broadcast being accompanied by graphics in the form, for example, of a clock displayed on the screen), to such an extent that the matches as a whole must be regarded as works that are protected by copyright. The court found the transmissions infringed the right of communication to the public (Article 3(1) InfoSoc Directive) and the related right attached to the audiovisual recordings (section 67 Copyright Act) and granted a blocking injunction.

#### 6.7.4.2. Online infringement of audiovisual sports content

In terms of the online infringement of audiovisual sports contents, the case of *Ugeskrift for Retsvæsen* (2020.3122 Ø) mentioned above deals with the streaming of online sports events.

As to who is considered by Danish courts to be direct or indirect infringers, telecommunications companies are considered as infringers due to the necessary temporary acts of reproduction that take place in their networks, but they are not liable for damages (e.g. *Ugeskrift for Retsvæsen* 2006.1474H).<sup>638</sup> In 2010, the Supreme Court found that The Pirate Bay was an indirect infringer (*Ugeskrift for Retsvæsen* 2010.2221H).<sup>639, 640</sup>

Furthermore, there are a number of criminal cases concerning card sharing used for piracy. For example, in the Sønderborg City court (*Retten i Sønderborg*)<sup>641</sup> judgment of 31 January 2013 in a criminal case, a person was sentenced to one year's imprisonment for card sharing. The case was prosecuted under the criminal provision of section 94 of

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<sup>637</sup> <https://www.jurabibliotek.dk/view/book/9788771985399/back-1.xml>.

<sup>638</sup> <https://www.jurabibliotek.dk/view/book/9788771980127/back-3.xml>.

<sup>639</sup> <https://www.jurabibliotek.dk/view/book/9788771980127/back-3.xml>.

<sup>640</sup> That result can probably not be upheld after the judgment of the CJEU in Case C-610/15 (*Stichting Brein v. Ziggo*).

<sup>641</sup> <https://domstol.dk/soenderborg/>.





the Radio and Television Act (implementing the Conditional Access Directive). The person had intentionally and for the purpose of making profit over three years possessed, distributed and made changes to decoders and other decoding devices for the purpose of providing unauthorised access for at least 300 persons to coded television programmes.

#### 6.7.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

In Denmark, case law dealing with the notion of “actual knowledge” of illegal activity or awareness on the part of the hosting provider, as stipulated under Article 14 of the E-Commerce Directive, is very limited.

In the Eastern Court of Appeal’s judgment of 31 January 2008 (unreported), the court gave a judgment in favour of a telecommunications company. The telecommunications company hosted a website and the plaintiff claimed that the website contained defamatory statements related to the plaintiff and a number of his companies. The court stated that the telecommunications company had arranged for adequate examination of the website’s legality and, furthermore, there was no doubt about the potential illegal nature of the website.

#### 6.7.4.4. Notice and take-down requirements

There are no precedents on this issue.

#### 6.7.4.5. Removal and blocking orders

Blocking injunctions have been awarded a number of times in Danish cases and are considered uncontroversial. The measures applied more often by the courts in order to remove or block illegal content are:

- blocking injunctions, where a court orders a telecommunications company to establish a DNS block of specific websites
- the State Prosecutor for Serious Economic and International Crime regularly obtains court orders according to which the state prosecutor can seize a number of domain names used for obvious pirate websites, typically for the purpose of phishing.



In the existing case law, these orders are always addressed to telecommunications companies, although there is no legal reason for not addressing the remedies to other relevant actors.

Thus, for example, in the case reported in *Ugeskrift for Retsvæsen* (2020.3122 Ø), the Eastern Court of Appeal granted an injunction against a telecommunications company to block access to a website that was streaming Spanish soccer matches without authorisation. The first and authoritative Supreme Court judgments on blocking injunctions are reported in *Ugeskrift for Retsvæsen* (2006.1474H) and *Ugeskrift for Retsvæsen* (2010.2221H).

There is no reported Danish case law on de-indexing injunctions but there is no reason to believe that such an injunction will not be granted if the ordinary conditions for preliminary injunctions are satisfied.

#### 6.7.4.6. Measures against end-users ordered by the courts

In cases against end-users, the measures are prohibition, damages and criminal sanctions.

#### 6.7.4.7. Compensation criteria adopted by the courts

In the case of infringement of sports events broadcasters' rights, pursuant to section 69 of the Copyright Act, damages will be calculated on the basis of the rightsholder's economic loss or the rightsholder is awarded a reasonable royalty. In many copyright cases, compensation is calculated as a combination of the rightsholder's economic loss and a reasonable royalty, pursuant to section 83 of the Copyright Act:

- (1) Anyone who with intent or by negligence violates any of the provisions of sections 76 and 77 shall pay*
  - (i) reasonable remuneration to the infringed party for the exploitation*
  - (ii) damages to the infringed party for any additional damage caused by the violation.*
- (2) When setting the damages according to subsection (1)(ii), consideration shall be given to such matters as the infringed party's loss of profits and the offender's unfair profits.*
- (3) In cases covered by subsection (1), compensation can also be set to the infringed party for non-financial damage.*

In Danish law there are no provisions on punitive and statutory damages.

#### 6.7.4.8. Criminal sanctions ordered by the courts

Criminal sanctions have not been applied to online piracy of audiovisual sports content. In any case, the Copyright Act allows the application of criminal sanctions to online piracy of audiovisual sports content as well.

## 6.7.5. Reports and studies

There are no reports or studies about online piracy of protected content in Denmark. Similarly, no reports or studies were identified in relation to the specific issue of illegal online transmissions of sports events or describing the legal offer of online sports content in Denmark.

An awareness campaign was conducted in recent years in Denmark in relation to online piracy, entitled “Share with Care”.<sup>642</sup> The website was established by the Danish Rights Alliance and, among other things, it includes a search facility that provides information on whether a specific website is legal or illegal.

With regard to the associations of broadcasters or rightsholders that actively work to address the issue of online piracy of audiovisual sports content, the Danish Rights Alliance may be mentioned; its members consist of individual rightsholders and associations of rightsholders. One of its members is La Liga which organises the men’s top professional soccer division of the Spanish soccer league system.

## 6.7.6. Data compilation

This country report is based on data compiled by Dr Thomas Riis, Professor in Innovation Law and Law & Economics at the law faculty of the University of Copenhagen.

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<sup>642</sup> <https://sharewithcare.dk/>.



## 6.7.7. Annex

**Table 53. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive (98/84/EC)</b>	Radio and Television Act ( <i>Radio- og tv-loven, lovbekendtgørelse nr 1350 af 04/09/2020</i> ) <sup>643</sup>
<b>Article 5 Conditional Access Directive – Infringing activities</b>	Section 94 of the Radio and Television Act
<b>InfoSoc Directive (2001/29/EC)</b>	Consolidated Act No. 1144 on Copyright of 23 October 2014 ( <i>Bekendtgørelse af lov om ophavsret, LBK nr 1144 – the Copyright Act</i> )
<b>Article 6 InfoSoc – Obligations as to technological measures</b>	Section 75c Copyright Act
<b>Article 8 InfoSoc – Sanctions and remedies</b>	Existing provisions of the Copyright Act and the Administration of Justice Act
<b>IPRED (2004/48/EC)</b>	Copyright Act /Administration of Justice Act
<b>Article 6 IPRED – Evidence and Article 7 IPRED – Measures for preserving evidence</b>	Existing provisions of the Copyright Act and the Administration of Justice Act
<b>Article 8 IPRED – Right of information</b>	Section 306-307 of the Administration of Justice Act
<b>Article 9 IPRED – Provisional and precautionary measures</b>	Existing provisions of the Copyright Act and the Administration of Justice Act
<b>Article 10 IPRED – Corrective measures</b>	Existing provisions of the Copyright Act and the Administration of Justice Act
<b>Article 11 IPRED – Injunction</b>	Existing provisions of the Copyright Act and the Administration of Justice Act
<b>Article 12 IPRED – Alternative measures</b>	N/A
<b>Article 13 IPRED – Damages</b>	Section 83 of the Copyright Act
<b>E-Commerce Directive (2000/31/EC)</b>	The e-Commerce Act <sup>644</sup> ( <i>E-handelsloven, LOV nr 227 af 22/04/2002</i> )
<b>Article 12-15 E-Commerce Directive – Liability of intermediary service providers</b>	Sections 14-16 of the e-Commerce Act, but Article 15 has not been transposed
<b>Article 17 E-Commerce Directive – Out-of-court dispute settlement</b>	Not transposed into new rules, one already exists
<b>Art 20 E-Commerce Directive – Sanctions</b>	Not transposed into new rules, one already exists

<sup>643</sup> <https://www.retsinformation.dk/eli/lta/2020/1350>.

<sup>644</sup> <https://www.consumereurope.dk/menu/laws/danish-laws/the-e-commerce-act/>;  
<https://www.retsinformation.dk/eli/lta/2002/227>.



EU directives	National law
DSM Directive (EU 2019/790)	Articles 15 and 17 transposed into the Copyright Act sections 69a and 52c



## 6.8. EE – Estonia – National legal summary<sup>645</sup>

### 6.8.1. General legal framework

#### 6.8.1.1. National legislation on copyright<sup>646</sup>

In Estonia, the Copyright Act (*Autoriõiguse seadus*) of 12 December 1992<sup>647</sup> is the general act that regulates the scope and the enforcement of copyright and related rights (the “Copyright Act”), as well as the following laws:

- The Law of Obligations Act (*Võlaõigusseadus*) of 1 July 2002<sup>648</sup>
- The Penal Code (*Karistusseadustik*) of 1 September 2002<sup>649</sup>
- The Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*) of 1 January 2006<sup>650</sup>
- The Code of Criminal Procedure (*Kriminaalmenetluse seadustik*) of 1 July 2004.<sup>651</sup>

Other laws are also relevant concerning copyright enforcement, as follows:

- The Information Society Services Act (*Infoühiskonna teenuse seadus*) of 1 May 2004<sup>652</sup>
- The Media Services Act (*Meediateenuste seadus*) of 16 January 2011, partially revised on 1 July 2011.<sup>653</sup>

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<sup>645</sup> The country report on Estonia incorporates the feedback received from Kärt Nemvalts (Ministry of Justice) during the checking round with the national competent institutions.

<sup>646</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>647</sup> <https://www.riigiteataja.ee/akt/119032019055>; English translation available at <https://www.riigiteataja.ee/en/eli/504042019001/consolide>.

<sup>648</sup> <https://www.riigiteataja.ee/akt/104012021019>; English translation available at <https://www.riigiteataja.ee/en/eli/512012021002/consolide>.

<sup>649</sup> <https://www.riigiteataja.ee/akt/110072020018>; English translation available at <https://www.riigiteataja.ee/en/eli/515072020011/consolide>.

<sup>650</sup> <https://www.riigiteataja.ee/akt/131122020004>; English translation available at <https://www.riigiteataja.ee/en/eli/505012021006/consolide>.

<sup>651</sup> <https://www.riigiteataja.ee/akt/129122020010>; English translation available at <https://www.riigiteataja.ee/en/eli/512012021001/consolide>.

<sup>652</sup> <https://www.riigiteataja.ee/akt/112122018039>; English translation available at <https://www.riigiteataja.ee/en/eli/515012019001/consolide>.

<sup>653</sup> <https://www.riigiteataja.ee/akt/112122018055>; English translation available at

In Estonia, copyright infringement can be considered as a criminal offence, a misdemeanour or a civil law violation. Chapter 14 of the Penal Code, entitled “Offences against Intellectual Property” provides for sanctions and remedies in the case of copyright infringement.

Under criminal law, the Penal Code (PC) differentiates between copyright infringements based on whether or not they were committed for profit. In particular, the Penal Code uses concepts of “infringement in professional or economic activities” (§222;<sup>1</sup> §223 PC), “infringement to receive proprietary benefits” (§224<sup>1</sup> PC) and “infringement committed outside personal use to receive benefits” (§225 PC). Infringement in professional or economic activities (§222;<sup>1</sup> §223 PC) is punished by criminal sanctions (up to one year’s imprisonment).

### 6.8.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>654</sup> has not been transposed to date (as at October 2021). A draft law transposing the provisions of the DSM Directive through amendments to the Estonian Copyright Act is currently under discussion and subject to public consultation.<sup>655</sup>

**Table 54. Regulatory framework**

EU directive	National law
DSM Directive	N/A
Intellectual Property Rights Enforcement Directive (IPRED)	Copyright Act; Law of Obligations Act; Code of Civil Procedure

<https://www.riigiteataja.ee/en/eli/511012019003/consolide>; also a relevant study for the context of this report is the Explanatory Memorandum to the Code of Civil Procedure Amendment Act (Securing an Action Based on Infringement of an Intellectual Property Right) 231 SE. Available at : [https://www.riigikogu.ee/tegevus/eelnoud/eelnou/cc71e734-faff-4e2f-8fd9-28ba876b0d7f/Tsiviilkohtumenetluse%20seadustiku%20muutmise%20seadus%20\(intellektuaalomandi%20C3%B5iguse%20rikkumisele%20tugineva%20hagi%20tagamine\)](https://www.riigikogu.ee/tegevus/eelnoud/eelnou/cc71e734-faff-4e2f-8fd9-28ba876b0d7f/Tsiviilkohtumenetluse%20seadustiku%20muutmise%20seadus%20(intellektuaalomandi%20C3%B5iguse%20rikkumisele%20tugineva%20hagi%20tagamine)) .

<sup>654</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

<sup>655</sup> The draft Amendment Act to the Copyright Act is currently going through parliament. Available at [https://www.riigikogu.ee/tegevus/eelnoud/eelnou/d3d07943-9d1c-4ebe-94a4-8ae1ebdf7a68/Autori%C3%B5iguse%20seaduse%20muutmise%20seadus%20\(autori%C3%B5iguse%20direktii%20C3%BClev%C3%B5tmine\)](https://www.riigikogu.ee/tegevus/eelnoud/eelnou/d3d07943-9d1c-4ebe-94a4-8ae1ebdf7a68/Autori%C3%B5iguse%20seaduse%20muutmise%20seadus%20(autori%C3%B5iguse%20direktii%20C3%BClev%C3%B5tmine)) .



EU directive	National law
Information Society (InfoSoc) Directive	Copyright Act; Penal Code; Code of Civil Procedure
E-Commerce Directive	Information Society Services Act
Conditional Access Directive	Copyright Act; Penal Code

Source: Estonian response to European Audiovisual Observatory standardised survey

## 6.8.2. National rules applicable to audiovisual sports content

### 6.8.2.1. Legal definitions of “broadcaster” and “sports event organiser”

There is no definition of “broadcaster” under Estonian law. However, the Media Services Act provides a definition for “audiovisual media services”. According to §4 thereof, an “audiovisual media service” means:

*a media service that is provided under the editorial responsibility of the audiovisual media service provider with the main purpose to provide informative, educational or entertaining programmes to the general public through an electronic communications network. An audiovisual media service is: 1) a television service which is provided on the basis of a programme schedule for simultaneous viewing of programmes. Television services are, in particular, a television programme service and a commercial communication; 2) an on-demand audiovisual media service which is provided for the viewing of programmes at the moment chosen by the user at his or her individual choice and request on the basis of a catalogue of programmes; 3) an audiovisual commercial communication which is, in particular, television advertising, sponsorship announcements, teleshopping and product placement; 4) other similar services provided in the course of economic activities except for services that do not compete with a television service. [...].*

There is no legal definition of “sports event organisers” in Estonian law.

### 6.8.2.2. Legal protection related to sports events

A sports event as such is not protected as an object of copyright or related rights under Estonian law, as it is not considered as an intellectual creation. Other rights may come into play, such as the standard conditions that individuals have to accept when entering premises or to allow access to the event (i.e. a type of “house” right). Based on these rights, sports organisers may establish rules for permitting access to the venue, or contractually set the conditions for filming the event.





If the event is recorded, the audiovisual recording may be protected by copyright as an audiovisual work if it reflects some creativity (e.g. filming, editing, camera angle). According to the Copyright Act, a “work” means any original output in the literary, artistic or scientific field, which is expressed in an objective form and which can be perceived and reproduced in this form either directly or by means of a technical device. A work is original if it is “the author’s own intellectual creation (§4(2)). In addition, the Copyright Act contains a definition of a “film” (§ 73.1.(2)) according to which a “film” is an audiovisual work or moving images with or without accompanying sound, which is not a cinematographic work.

If the audiovisual recording of the sporting event reflects a certain degree of creativity, it may be protected as an audiovisual work by copyright.

Moral and economic rights attached to the work shall initially belong to the author, who is the natural person or persons who created the work (§28 Copyright Act). In the case of audiovisual works, the economic rights belonging to authors and co-authors (director, script writer, author of dialogue, camera operator, designers) are transferred to the producer of the work, unless otherwise prescribed by contract (with the exception of musical rights). For works created within the framework of an employment relationship (§ 32 Copyright Act), the commercial/economic rights related to the use of the audiovisual content may also be transferred to the company employing the creator(s), unless contractually agreed otherwise. In this case, the author(s) retains the moral rights to the content.

If the audiovisual recording is broadcast, the general rules on the related (or “neighbouring”) rights of broadcasting organisations apply to the broadcast of the sports event, as defined in Chapter VIII of the Copyright Act dedicated to related rights. According to §73 thereof, these rights include the exclusive right to authorise or prohibit: the retransmission and the recording of their broadcasts; the reproduction (direct or indirect, temporary or permanent, partial or total) of recordings of their broadcasts in any form or by any means; the communication to the public of their broadcasts (in places open to the public against payment of an entrance fee); the making of recordings of their broadcasts available to the public in such a way that persons may access the broadcasts from a place and at a time individually chosen by them; and their distribution to the public.

By “communication to the public”, §10 of the Copyright Act includes the making available of the work in a place which is open to the public, and the transmission or retransmission of the work to the public by means of any technical device or process, regardless of whether the public perceives the work or not. The work is deemed to have been made available to the public if it is communicated to the public by a cable network or by communicating it without cable in such a way that the public may access the work from a given place and at a chosen time.

In the case of infringement of broadcasting or online transmission of a sports event, only the owner of the copyright and/or related rights can invoke the provisions of

the Copyright Act to take legal action and require the cessation of the infringement and damages.

Different scenarios are possible. Firstly, if the event is recorded, the person who made the recording may have copyright in the work that has been recorded (as defined in §4(2) of the Copyright Act), if that recording reflects a certain degree of originality. This person will then be entitled to take legal action if his/her rights are infringed (unless he/she has transferred his/her economic rights to the employing company, in which case the latter will be entitled to take legal action). The producer of the recording (as a film) is also entitled to take legal action as the holder of related rights in the fixation of the work (without any requirement for originality).

Secondly, if the initial recording is broadcast, the broadcaster will have the right to take legal action in the event of infringement of its related rights in the broadcast.

Thirdly, there could also be contractual claims on the basis of breach of contract, based on the “house” right related to the sports venue (e.g. where visitors to a sports event agree to certain standard conditions for not recording and transmitting a sports event they are attending).

### 6.8.2.3. Other specific rules applicable to sports events

There is no other specific legal protection for sports events organisers in Estonia, nor for the use of sports content in social media.

**Table 55. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
<b>Broadcaster</b>	No	Related rights
<b>Sports event organiser</b>	No	Non-statutory rights linked to the venue (i.e. house rights)

*Source: Estonian response to European Audiovisual Observatory standardised survey*

## 6.8.3. Remedies and sanctions applicable in the event of infringement

### 6.8.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

From a civil law perspective, in the case of unlawful use of a work or an object of related rights, the author or holder of the related rights may, according to §81<sup>7</sup> of the Copyright Act, claim the following: i) compensation, pursuant to §1043 of the Law of Obligations Act, for the patrimonial and non-patrimonial damage caused through the unlawful use of a work or an object of related rights; ii) termination of the unlawful use of a work or an object of related rights and refrainment from further violation, pursuant to §1055 of the Law of Obligations Act; iii) delivery of that which was received by way of the unlawful use of a work or an object of related rights pursuant to §§1037 and 1039 of the Law of Obligations Act.

When it comes to civil enforcement, it is up to the rightsholder whether to claim damages and/or compensation based on unjust enrichment and/or require the termination of the alleged infringing activity. Based on the Code of Civil Procedure (CCP),<sup>656</sup> the rightsholder can also use measures for securing action. The court may, among other measures for securing an action based on infringement of copyright or related rights, order an intermediary whose services are being used to infringe intellectual property rights to take steps to stop the infringement or to prevent it (§378(2) clause 2 CCP).

All these remedies and measures can be invoked in cases concerning online piracy of audiovisual sports content as well. Similarly, there are no restrictions on the provisions regarding the preservation of evidence, the right of information, and provisional and precautionary measures can be applied to cases of online piracy of audiovisual sports content too.

Furthermore, online piracy may involve several interconnected activities, such as getting access to protected content, making it available for free, making it available for profit, marketing devices used for gaining access to pirated content, etc., which means that more than one provision of the Penal Code is applicable.

In particular, concerning the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive), §80<sup>3</sup> of the Copyright Act provides for the protection of technical measures. Meanwhile, §225<sup>1</sup> of the Penal Code ensures the legal protection of services based on, or consisting of, conditional access, through the provision of sanctions and remedies in the case of illegal receipt of information society services (ISSs) and media services. This includes the manufacture for commercial purposes, transfer, installation, maintenance, possession or advertising of equipment or software enabling illegal access to fee-charging ISSs or pay-TV or pay-radio programmes or broadcasts, or services enabling access to such services, which is

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<sup>656</sup> *Tsiviilkohtumenetluse seadustik* (Code of Civil Procedure). Entry into force 1 January 2006: <https://www.riigiteataja.ee/akt/131122020004>; English translation available at <https://www.riigiteataja.ee/en/eli/505012021006/consolide>. The latest revision of the CCP entered into force on 10 January 2021, the Amendment Act of the Code of Civil Procedure (securing an action based on infringement of an intellectual property right) (*Tsiviilkohtumenetluse seadustiku muutmise seadus (intellektuaalomandi õiguse rikkumisele tugineva hagi tagamine)*) <https://www.riigiteataja.ee/akt/131122020002>.



punishable by a fine of up to 300 fine units (if committed by a legal person it is punishable by a fine of up to EUR 3 200).

Furthermore, §225 of the Penal Code provides for sanctions and remedies in the case of removal of technical protective measures and information. In particular, the unlawful alteration or removal of technical protective measures, or manufacture, use, making available as a service or distribution of means or devices used solely or mainly for removal of the protective measures, if the act was committed outside personal use in order to receive benefits, is punishable by a fine of up to 100 fine units (if committed by a legal person, EUR 3 200 can be imposed as a fine).

Other cases relevant to online piracy foreseen in the provisions of the Penal Code include:

- The infringement of copyright by means of a computer system in professional or economic activities, above a certain threshold of gain or damages caused by the infringement, is punishable by a pecuniary punishment or up to one year's imprisonment (§222<sup>1</sup> PC).
- The illegal "communication to the public of works and other subject matters", including the public performance, showing, transmission, retransmission or making available to the public of copyright-protected works or other subject matter protected by related rights in professional or economic activities (if the amount of gain or damages caused by the infringement exceeds the amount of 20 minimum daily rates) is punishable by a pecuniary punishment or up to one year's imprisonment (§223 PC).
- Copyright infringement in order to receive proprietary benefits is punishable by a fine of up to 300 fine units. The court may also confiscate the object of protection. The same act if committed by a legal person is punishable by a fine of up to EUR 6 400 (§224<sup>1</sup> PC).

In general, the rightsholder may choose between civil and criminal enforcement. Criminal enforcement requires in most cases infringement on a commercial scale, in the course of professional activities. The main means of combating infringement of intellectual property rights is through civil court proceedings, according to §378 clause 2 of the Code of Civil Procedure, which states that in order to secure an action based on the infringement of copyright or related rights or industrial property rights, the court may also order an intermediary whose services are used to infringe intellectual property rights to take measures to stop or prevent the infringement.

#### 6.8.3.2. National bodies with competences on copyright enforcement

Copyright related disputes could be managed by the copyright committee (out-of-court settlement, pursuant to Article 17 E-Commerce Directive as transposed into §87 of the



Copyright Act). The copyright committee, formed at the Patent Office,<sup>657</sup> works as a conciliation body and an expert committee. According to §87 of the Copyright Act, the copyright committee includes among its missions that of resolving, at the request of the parties, disputes related to copyright and related rights by way of conciliation between the parties, pursuant to the procedure set out in the Conciliation Act.

#### 6.8.3.3. Codes of conduct and Memorandums of Understanding

There is no Memorandum of Understanding specifically addressing online infringement of audiovisual sports content in Estonia. However, in 2001, in the fields of music, audiovisual and interactive games, the Estonian Organisation for Copyright Protection (EOCP),<sup>658</sup> a non-profit organisation aimed at protecting the rights of producers of music, film and interactive games signed an MoU with different Estonian Internet Service Providers (ISPs), to enable the removal of infringing materials. In 2004 this MoU was updated to allow removal of illegal copyright material from the public servers of major ISPs.

#### 6.8.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

Within the current legal framework in Estonia, a rightsholder can start a civil or a criminal procedure as explained above and/or contact the individual/entity sharing content or an intermediary through a notice and take-down procedure. However, online copyright infringement usually does not go to court as this is not considered by rightsholders to be the most efficient mechanism to block content, and notice and take-down measures are given priority.

In Estonia, the EOCP is the main organisation involved in notice and take-down procedures with regards to its members' content. The EOCP, which was created by collective management organisations representing rightsholders in the fields of music, film and interactive games, carries out online monitoring for its members and sends notifications to the ISP providing hosting services in the case of online copyright infringement, pursuant to §10 of the Information Society Services Act ("Restricted liability upon provision of information storage service"). According to this provision, which transposes into Estonian law Article 14 of the E-Commerce Directive, an information storage service (hosting) is not liable for the information stored at the request of a

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<sup>657</sup> The Copyright Committee (§ 87): (1) A copyright committee (hereinafter the committee) shall be formed at the Patent Office and the committee shall act in the capacity of an expert committee. The minister responsible for the area shall appoint the members of the committee for a period of five years. <https://www.riigiteataja.ee/en/eli/504032021006/consolide>.

<sup>658</sup> <https://www.eako.ee/en/tutvustus/>.



recipient of the service, on condition that: i) the provider does not have actual knowledge; ii) if the provider does have actual knowledge, it acts expeditiously in order to remove the facts or circumstances from which the illegal activity of information is apparent.

In practice, when illegal content is discovered, the EOCP notifies the ISP of the infringing content (with a sufficient description) to remove it. The ISP becomes aware of the illegal content and removes it without delay, without revealing the identity of the infringer (if the ISP fails to do so, it is always possible for the rightsholder to resort to normal civil proceedings). The EOCP also contacts search engines to remove links to illegal material. The enforcement mainly focuses on the service providers (ISPs, Google, YouTube).

#### 6.8.3.5. Removal and blocking orders

During civil procedures, online infringement of intellectual property rights can be stopped through provisional and precautionary measures, as regulated by §§377 to 378 of the CCP on securing action (implementing Article 9(1) IPRED). In particular, according to §377, the court may grant an injunction at the request of the plaintiff if there are reasons to believe that failure to do so may make the execution of a court judgment difficult or impossible. On the basis of §377(2) of the CCP, when granting an injunction (not related to a pecuniary claim), the court may provisionally decide on a claim and, in particular, on the manner in which a given object may be used, if this is necessary to prevent significant damage or arbitrary action or for another reason. Such an interim injunction may be ordered irrespective of whether there are reasons to believe that failure to secure the action may make the enforcement of the court order difficult or impossible. According to §378 of the CCP, the measures for securing action include the prohibition on the defendant to perform certain transactions or perform certain acts, including imposition of a restraining order. This measure may also be applied at the initiative of the court. Furthermore, §378(2) clause 2 specifies that the preliminary measure can also apply to an intermediary, whose services are used to infringe intellectual property rights to stop or prevent the infringement.

The Law of Obligations Act regulates injunctions. According to §1055 of this law(which implements Article 11 of the IPRED), if unlawful damage is caused by the infringement of a copyright or related rights, the person whose rights have been infringed may request 1) that the infringer and the person whose services have been used by a third party for the purpose of infringement of the right be prevented from continuing the infringement; 2) that, in order to eliminate the infringement, reasonable measures be applied in respect of the infringing goods and the materials and implements principally used in the manufacture or creation of those goods, including their destruction, recall and permanent removal from the channels of commerce.

In the case of online piracy of audiovisual sports content, the rightsholder can require the court to terminate the infringement (e.g. block the website), as a measure to secure action, that may also be directed against an intermediary (§378(2) clause 2 CCP). This could lead to a judgment in which the court orders the removal of the infringement



(§1055 Obligations Act). This is true in cases where the infringer is known or identifiable by the rightsholder. However, a problem arises where the infringer is not known or is inaccessible, for instance, if the infringing content is made available in a foreign country. In these circumstances, it may be difficult to combat online piracy in practice. Indeed, the rightsholder can initiate proceedings and demand measures to secure the action, but the problem is that §378(2) clause 2 of the CCP governs preliminary measures, i.e. measure that serve to secure an action, while in cases where the infringer is not known, the legal action does not follow. Therefore, the measure is taken to secure an action (e.g. the website is blocked) but the main proceedings cannot start and the court can stop the use of the measure at any time.

The blocking of infringing and pirate websites is subject to court procedure, as a guarantee to ensure the protection of the fundamental rights and freedoms involved. However, it is also considered by rightsholders as not dynamic enough to combat online piracy. Some examples of other approaches to blocking websites in other areas, such as the model used to combat illegal online gambling, as regulated in §56 of the Gambling Act (“Restricting access to illegal remote gambling”) are shown as examples that could apply more efficiently to copyright enforcement. The model is more flexible as it does not require an extensive burden (e.g. starting court proceedings, etc.). In this model, the provider of the data storing service will remove the illegal gambling content or block access to such web pages on an order from the Tax and Customs Board by the due date set out in the order.<sup>659</sup> However, in the context of copyright, such a solution could raise questions of sufficient balance of fundamental rights.

In the event the infringer is known, then the rightsholder can require the court to apply measures for securing the action (e.g. terminate the infringing activity such as streaming) directed against the infringer, on the basis of §377 and §378 as reported above.

#### 6.8.3.6. Measures against end-users

There are no cases related to the application of measures against end-users in Estonia.

#### 6.8.3.7. Criminal sanctions

Criminal offences are regulated in the Penal Code. In the case of online piracy, §223 of the Penal Code is most likely to apply. It refers to the illegal communication to the public

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<sup>659</sup> *Hasartmänguseadus* (the Gambling Act). Entry into force 1 January 2009. The official version in Estonian available at <https://www.riigiteataja.ee/akt/12111202000>; English translation available at <https://www.riigiteataja.ee/en/eli/525112020004/consolide>; the list of blocked websites available at [https://www.emta.ee/sites/default/files/eraklient/maa\\_soiduk\\_mets\\_hasartmang/mta\\_must\\_nimekiri\\_11.01.2021.pdf](https://www.emta.ee/sites/default/files/eraklient/maa_soiduk_mets_hasartmang/mta_must_nimekiri_11.01.2021.pdf).



of copyright-protected works and other subject matters protected by related rights and includes the illegal public performance, showing, transmission, retransmission or making available to the public of copyright-protected works or other subject matter protected by related rights in professional or economic activities, if the amount of gain or damages caused by the infringement exceeds the amount of twenty minimum daily rates, which is punishable by a pecuniary punishment or up to one year's imprisonment. The same act, if committed by a legal person, is punishable by a pecuniary punishment.

As mentioned previously, when an infringement takes place in Estonia, the server can be closed. However, if the infringer is not identifiable and/or the infringing activity is realised in another country, there is no specific procedure and the only mechanism available is the one provided in §142 on the seizure of property in the Code of Criminal Procedure.

**Table 56. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No, national copyright law
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial bodies)	Yes, the Estonian Organisation for Copyright Protection (EOCP) regarding online copyright infringement. There is also an expert and conciliatory body for copyright issues, the copyright committee (out-of-court dispute settlements).
Entitlement to take legal action	Yes, rightsholders (producer, broadcaster); (sports event organisers for contractual claims based on their house rights)
Codes of conduct	No
Specific proceedings	No
Specific remedies	No

Source: Estonian response to European Audiovisual Observatory standardised survey

**Table 57. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	Yes





Typology	Description
Removal and blocking injunctions	Yes
Dynamic and/or live blocking injunctions	No
De-indexing injunctions	Not mentioned in national law; never applied
Damages and orders to cease and desist	Yes
Administrative offence and remedies	Not relevant for online copyright infringement
Notice and take-down procedures	Yes

Source: Estonian response to European Audiovisual Observatory standardised survey

#### 6.8.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions in relation to online infringement of audiovisual sports content.

**Table 58. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
Communication to the public	Payment for the transmission of the signal; payment to the author's society	Estonian Supreme Court 3-2-1-50-13; 29 May 2013 3-2-1-159-16; 27 February 2017
Hosting providers' knowledge and awareness of illegal activity	Insulting blog post	Harju county court case 2-17-11524/46; 28 November 2019
Notice and take-downs	N/A	N/A
Measures against end-user	N/A-	N/A
Criminal sanctions	N/A	Harju county court (1-18-10156/9; 11 February 2019)

Source: Estonian response to European Audiovisual Observatory standardised survey



#### 6.8.4.1. Communication to the public

There is some case law on the concept of communication to the public, however, it does not concern audiovisual sports content. For instance, the Estonian Supreme Court case (3-2-1-50-13; 29 May 2013) concerned the claim of the Estonian Authors' Society against Viasat AS to terminate the transmission of TV programmes to the end-users and pay compensation of EUR 285 346. In this case, the main issue was whether there is a need to pay for the transmission of the signal to end-users.<sup>660</sup>

Another case at the Estonian Supreme Court case (3-2-1-159-16; 27 February 2017) concerned the claim of the Estonian Authors' Society against the city of Tartu to compensate for damages of EUR 81 or transfer any revenue received as a result of the violation. In the case, a municipal school had organised a public concert and did not pay the authors' society.<sup>661</sup>

Other cases of lower court instances concern the organisation of concerts and public performance of phonograms.

#### 6.8.4.2. Online infringement of audiovisual sports content

No court cases concerning piracy of audiovisual sports content have been identified in Estonia and no cases initiated by a sports event organiser or broadcaster to control a sports event in Estonia have been detected.

The EOCP usually deals with copyright infringement of content of its members in the music, film and games industry, especially by sending take-down notices and contacting ISPs to take down infringing content.<sup>662</sup>

In a case at the Harju county court (1-18-10156/9; 11 February 2019),<sup>663</sup> two individuals and a company had retransmitted TV and music channels in the websites they controlled. They committed the crime of "unlawful communication to the public of copyright-protected works and other subject matter protected by related rights" provided by §223 of the Penal Code and were punished accordingly.

#### 6.8.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

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<sup>660</sup> <https://www.riigikohus.ee/et/lahendid/?asjaNr=3-2-1-50-13>.

<sup>661</sup> <https://www.riigikohus.ee/et/lahendid/?asjaNr=3-2-1-159-16>.

<sup>662</sup> <https://www.eako.ee/en/>.

<sup>663</sup> <https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=242598592>.

The notion of knowledge and awareness of illegal activity is referred to under in the Information Society Services Act, in relation to §10 on the “Restricted liability upon provision of an information storage service”. According to this provision, an ISS provider is not liable for the information stored: i) if it does not have actual knowledge of the content of the information and is not aware of facts or circumstances from which the illegal activity or information is apparent; ii) it acts expeditiously to remove or to disable the content after obtaining knowledge.

To date, only the Harju county court case (2-17-11524/46, 28 November 2019) has referred to §10 of the Information Society Services Act and this case concerned the issue of insulting blog posts and has little relevance for sports events.<sup>664</sup>

#### 6.8.4.4. Notice and take-down requirements

As concerns music, film and interactive games, the EOCP contacts an ISP providing hosting service directly. The EOCP also contacts search engines to remove links to illegal material. The enforcement mainly focuses on service providers (ISPs, Google, YouTube). When illegal content is discovered, the organisation contacts the ISP to remove it. The content is removed without revealing the identity of the infringer. This method is considered more efficient than starting civil proceedings which are considered as too lengthy: the ISPs, in fact, are cooperative and do not object to the concept of actual knowledge.

#### 6.8.4.5. Removal and blocking orders

No cases have been detected in relation to online copyright infringement of audiovisual sports content.

#### 6.8.4.6. Measures against end-users ordered by the courts

No cases have been detected regarding the application of measures against end-users ordered by the courts. Suspending or blocking internet access is not regulated in Estonian law. Therefore, these measures are not available. It is highly likely that ISPs will have a term in their standard user agreements that stipulates that copyright infringement is not allowed.

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<sup>664</sup> Available at <https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=260198820>.



#### 6.8.4.7. Compensation criteria adopted by the courts

There are no cases dealing with the illegal retransmission or making available of sports events.

In general, potential damages are regulated in the Law of Obligations Act. If damage is established but the exact extent of the damage cannot be established, the amount of compensation shall be determined by the court. The court may determine compensation for the damage as a fixed amount, taking account, *inter alia*, of the amount of the fee the violator should have paid if he or she had obtained authorisation for use of the relevant right.

Under Estonian law neither punitive damages nor statutory damages (predetermined compensation) are regulated. The rightsholder can claim actual damage. This is in line with the fundamental principle of Estonian law. According to §127 of the Law of Obligation Act, this principle is that

*the purpose of compensation for damage is to place the aggrieved person in a situation as near as possible to that in which the person would have been if the circumstances which are the basis for the compensation obligation had not occurred.*

#### 6.8.4.8. Criminal sanctions ordered by the courts

Criminal enforcement of IP rights is not prevalent. The policy is that IP issues are settled in a civil court. Sports content could be part of some illegal TV offerings (see for instance Harju county court case No. 1-18-10156/9 of 11 February 2019) – although sports content was not the issue in this case.<sup>665</sup> This case concerned the illegal broadcast of TV channels on the internet. The infringers did not go to prison but they had to compensate for damages.

### 6.8.5. Reports and studies

In Estonia, no studies focusing on online piracy of protected content have been identified for several years. There is no specific study either addressing the illegal online transmission of sports events. Illegal sharing of sports content is usually done through the sharing of links to illegal streaming sites located in other countries. Links tend to be shared by users of various online forums within those forums. Sports content could also be part of illegal Internet Protocol television (IPTV) offerings. Despite these recent developments, there is no well-known and practical strategy or other policy document to address IP enforcement in Estonia.

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<sup>665</sup> <https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=242598592>.



The Estonian government adopted the Digital Agenda 2020 for Estonia,<sup>666</sup> where among the principles relating to the development of the information society, it is affirmed that “[t]he development of the information society takes into account and protects both the creators of intellectual values and the interests of users” (Annex 1, p. 47). Another draft government strategy entitled “Estonian Research and Development, Innovation and Entrepreneurship Development Plan 2021–2035”, mentions intellectual property in the context of innovation (p. 11), industry-academia knowledge transfer (p. 12) and entrepreneurship (p. 13).<sup>667</sup>

Regarding relevant organisations aimed at combating internet piracy, the Estonian Organisation for Copyright Protection (EOCP), a non-profit organisation established in 1999, plays a key role in Estonia. Its primary purpose is to protect the rights of producers of music, film and interactive games and to support the interests of its members in Estonia (local collective societies, music and film producers). The EOCP cooperates closely with the police and customs authorities and provides experts’ statements on copyright violations to courts and national investigation institutions. Among its main activities, the EOCP includes the online monitoring of its members’ content; checking the legality of the use of musical and audiovisual works; raising awareness on copyright; cooperating with government agencies in developing legislation of intellectual property rights and with umbrella organisations such as the Motion Picture Association–EMEA and IFPI (representing the recording industry worldwide) to tackle copyright infringement.

At the moment, there are no other associations of broadcasters or rightsholders that work actively to address the issue of online piracy of audiovisual sports content in Estonia.

## 6.8.6. Data compilation

This country report is based on data compiled by Aleksei Kelli, professor of Intellectual Property Law at the University of Tartu who is also responsible for managing the intellectual property rights (IPRs) of digital language resources at the University of Tartu and the Institute of the Estonian Language.

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<sup>666</sup> [https://www.mkm.ee/sites/default/files/eesti\\_infouhiskonna\\_arengukava.pdf](https://www.mkm.ee/sites/default/files/eesti_infouhiskonna_arengukava.pdf); English translation (short version) available at: [https://www.mkm.ee/sites/default/files/digital\\_agenda\\_2020\\_web\\_eng\\_04.06.19.pdf](https://www.mkm.ee/sites/default/files/digital_agenda_2020_web_eng_04.06.19.pdf).

<sup>667</sup> *Eesti teadus- ja arendustegevuse, innovatsiooni ning ettevõtluse arengukava 2021–2035* (Estonian Research and Development, Innovation and Entrepreneurship Development Plan 2021–2035). The official version in Estonian available at: <https://www.mkm.ee/et/eesmargid-tegevused/arengukavad>.



## 6.8.7. Annex

**Table 59. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive 98/84/EC</b>	Copyright Act; Penal Code (PC)
<b>Article 5 Conditional Access Directive 98/84/EC – Infringing activities</b>	<p>§225<sup>1</sup> PC – Illegal receipt of ISSs and media services</p> <p>§224<sup>1</sup> PC – Copyright infringement</p> <p>§225 PC – Removal of technical protective measures and information</p> <p>Civil law remedies as listed in the Copyright Act:</p> <p>§81<sup>7</sup> Copyright Act – Protection of copyright and related rights under civil law</p>
<b>InfoSoc Directive 2001/29/EC</b>	Copyright Act/Penal Code
<b>Article 6 InfoSoc – Obligations as to technological measures</b>	<p>§80<sup>3</sup> Copyright Act – Technological measures</p> <p>§225 PC – Removal of technical protective measures and information</p>
<b>Article 8 InfoSoc – Sanctions and remedies</b>	<p>Act §817 Copyright Act: Protection of copyright and related rights under civil law</p> <p>§222<sup>1</sup> PC: Infringement of copyright in computer systems; § 223 – Unlawful direction of works and objects of related rights towards the public; § 224<sup>1</sup> – Copyright infringement; § 225 – Removal of technical protective measures and information.</p> <p>Their application is dictated by specific details of the case. When it comes to civil enforcement, then it is up to the rightsholder whether to claim damages, rely on unjust enrichment and/or require the termination of the alleged infringement.</p> <p>Procedural issues in civil law disputes are regulated in the Code of Civil Procedure. (Procedure to improve measures securing action in the case of IP infringement entered into force on 10 January 2021.) The key provision which also affects intermediaries is §378 on “Measures for securing action”.</p>
<b>IPRED 2004/48/EC</b>	<p>Copyright Act (e.g. §29. Presumption of authorship/IPRED Article 5 – Presumption of authorship or ownership);</p> <p>Law of Obligations Act.</p>
<b>Article 6 IPRED – Evidence</b>	§280 of the Civil Procedure Code – Obligation to provide information on action related to IP



<b>Article 7 IPRED – Measures for preserving evidence</b>	§244 – Preliminary collection of evidence
<b>Article 8 IPRED – Right of information</b>	§280 – Obligation to provide information on action related to IP
<b>Article 9 IPRED – Provisional and precautionary measures</b>	§378 – Measures for securing action
<b>Article 10 IPRED – Corrective measures</b>	§ 1055 of the Law of Obligations Act – Prohibition against performance of damaging acts
<b>Article 11 IPRED – Injunctions</b>	§ 445 – Determination of procedure for and term of compliance with judgment
<b>Article 12 IPRED – Alternative measures</b>	–
<b>Article 13 IPRED – Damages</b>	§ 127 of the Law of Obligations Act: Purpose and extent of compensation for damage
<b>E-Commerce Directive 2000/31/EC</b>	Information Society Services Act ( <i>Infoühiskonna teenuse seadus</i> ). Entry into force 01 May 2004 <sup>668</sup>
<b>Article 12/13/14 and 15 E-Commerce Directive</b>	Article 12 is transposed in §8 of the Information Society Services Act – Restricted liability upon mere transmission of information and provision of access to public data communications networks; Article 13 in §9 – Restricted liability upon temporary storage of information in cache memory Article 14 in §10 – Restricted liability upon provision of information storage service; Article 15 in §11 – No obligation to monitor
<b>Articles 16 to 20 E-Commerce Directive</b>	No codes of conduct relevant for copyright disputes; instead, concerning Article 17 of the E-Commerce Directive, the copyright committee will be responsible for consumer disputes or also the Consumer Protection and Technical Regulatory Authority. Article 17 is transposed into §87 of the Copyright Act on the copyright committee. Articles 18 and 19 are transposed into §12 of the Information Society Act on State supervision; §13 on specific state supervision measures; §14 on penalty payment rates; §15 on transmission of non-conforming information; §16 on proceedings.
<b>DSM Directive EU 2019/790</b>	Not transposed (as at October 2021).

<sup>668</sup> Official version in Estonian available at <https://www.riigiteataja.ee/akt/112122018039>; English translation available at <https://www.riigiteataja.ee/en/eli/515012019001/consolide>.



## 6.9. ES – Spain – National legal summary<sup>669</sup>

### 6.9.1. General legal framework

#### 6.9.1.1. National legislation on copyright<sup>670</sup>

In Spain, the enforcement of copyright is regulated by several laws, classified in two categories, civil and criminal law. In particular, the civil and administrative laws are as follows:

- The consolidated Text of the Law on Intellectual Property, Regularising, Clarifying and Harmonising the Applicable Statutory Provisions (Real Decreto Legislativo 1/1996, de 12 de abril, por el que se aprueba el texto refundido de la Ley de Propiedad Intelectual, regularizando, aclarando y armonizando las disposiciones legales vigentes sobre la materia – LPI)<sup>671</sup>
- Royal Decree No. 1889/2011, of 30 December 2011, on the Operation of the Intellectual Property Commission (Real Decreto 1889/2011, de 30 de diciembre, por el que se regula el funcionamiento de la Comisión de Propiedad Intelectual)<sup>672</sup>
- Law No. 29/1998 of 13 July 1998, on the Contentious-Administrative Jurisdiction (Ley 29/1998, de 13 de julio, reguladora de la Jurisdicción Contencioso-administrativa)<sup>673</sup>
- Law No. 34/2002 of 11 July 2002, on Information Society Services and Electronic Commerce (Ley 34/2002, de 11 de julio, de servicios de la sociedad de la información y de comercio electrónico),<sup>674</sup> with regard to the obligations and liability of information society service providers concerning copyright infringement.

On the other hand, the criminal law which provides for the enforcement of copyright is the Penal Code (*Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal* – PC).<sup>675</sup>

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<sup>669</sup> The country report on Spain incorporates the feedback received from Mercedes del Palacio (Permanent Representation of Spain to the European Union) during the checking round with the national competent institutions.

<sup>670</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>671</sup> <https://wipolex.wipo.int/en/legislation/details/20049>.

<sup>672</sup> <https://wipolex.wipo.int/en/legislation/details/16717>.

<sup>673</sup> <https://wipolex.wipo.int/en/legislation/details/20425>.

<sup>674</sup> <https://wipolex.wipo.int/en/legislation/details/20419>.

<sup>675</sup> <https://wipolex.wipo.int/en/legislation/details/18760>.



In Spain, the infringement of intellectual property (IP) rights may constitute both a civil offence and a crime or misdemeanour punishable under criminal law. The classification as a crime or misdemeanour is determined by the concurrence in the act of unauthorised exploitation of intellectual works and other IP rights of two circumstances, according to Article 270 PC: (i) the intention to obtain a direct or indirect economic benefit and (ii) whether the act is carried out “to the detriment of a third party”. Both conditions are necessary for the act to be qualified as a crime or misdemeanour.

### 6.9.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>676</sup> has been transposed in Spain by means of Royal Decree-law 24/2021 of 2 November 2021.<sup>677</sup> The same also transposes other directives the implementation of which was pending, including Directive (EU) 2019/789 on online transmissions of broadcasting organisations and retransmissions of television and radio programmes.

**Table 60. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	Real Decreto-ley 24/2021, de 2 de noviembre, de transposición de directivas de la Unión Europea en las materias de bonos garantizados, distribución transfronteriza de organismos de inversión colectiva, datos abiertos y reutilización de la información del sector público, ejercicio de derechos de autor y derechos afines aplicables a determinadas transmisiones en línea y a las retransmisiones de programas de radio y televisión, exenciones temporales a determinadas importaciones y suministros, de personas consumidoras y para la promoción de vehículos de transporte por carretera limpios y energéticamente eficientes.
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	Law 19/2006, of 5 June, which extends the means of protection of intellectual and industrial property rights and establishes procedural rules to facilitate the application of various community regulations ( <i>Ley 19/2006, de 5 de junio, por la que se amplían los medios de tutela de los derechos de propiedad intelectual e industrial y se establecen normas procesales para facilitar la aplicación de diversos reglamentos</i> )

<sup>676</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

<sup>677</sup> [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2021-17910](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-17910)



EU directive	National law
	<i>comunitarios</i> ). Law 19/2006 amends, among others, Law 1/2000 on Civil Procedure and Law 1/1996 on Intellectual Property.
<b>Information Society (InfoSoc) Directive</b>	Law 23/2006, of 7 July, amending the revised text of the Intellectual Property Law, approved by Royal Legislative Decree 1/1996 of 12 April 1996 ( <i>Ley 23/2006, de 7 de julio, por la que se modifica el texto refundido de la Ley de Propiedad Intelectual, aprobado por el Real Decreto Legislativo 1/1996, de 12 de abril</i> )
<b>E-Commerce Directive</b>	Act 34/2002 of 11 July on Information Society Services and Electronic Commerce ( <i>Ley 34/2002, de 11 de julio, de servicios de la sociedad de la información y de comercio electrónico</i> )
<b>Conditional Access Directive</b>	Penal Code ( <i>Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal</i> )

Source: Spanish response to European Audiovisual Observatory standardised survey

## 6.9.2. National rules applicable to audiovisual sports content

### 6.9.2.1. Legal definitions of “broadcaster” and “sports event organiser”

In Spanish law, there is no definition of “broadcaster”, but there are other terms that are closely related. In particular, Act 7/2010, of 31 March 2010 on General Audiovisual Communication provides a definition of “Audiovisual Communication Service Provider”, such as “the natural or legal person who has effective control, that is, editorial direction, over the selection of programmes and content and their organisation in a channel or in a catalogue of programmes. The holder of an audiovisual communication licence shall be considered a service provider.”

In addition, Act 9/2014, of 9 May 2014 on General Telecommunications defines an “operator” as the “natural or legal person that exploits public electronic communications networks or provides publicly available electronic communications services and has notified the Ministry of Industry, Energy and Tourism of the commencement of its activity or is registered in the Operators' Register.”

Spanish national law does not provide a legal definition of “sports events organisers.” The broadcasting of sports events is also not defined, although the General Law on Audiovisual Communication includes within the definition of “television programmes” the sporting events that are broadcast on television.

### 6.9.2.2. Legal protection related to sports events

Sports events are not considered copyrightable works in Spain and cannot be protected from the point of view of IP law, as Spanish courts have confirmed on numerous occasions.<sup>678</sup>

However, although there is no general regulation at state level that protects all sports events, some sectoral regulations give specific protection to sports event organisers in relation to certain sports events. For example, in the case of professional football, Royal Decree-Law 5/2015, of 30 April, on urgent measures in relation to the commercialisation of the exploitation rights of audiovisual content of professional football competitions (*Real Decreto-ley 5/2015, de 30 de abril, de medidas urgentes en relación con la comercialización de los derechos de explotación de contenidos audiovisuales de las competiciones de fútbol profesional – RDL 5/2015*)<sup>679</sup> establishes, in its Article 2(2), that participation in an official professional football competition in Spain will necessarily entail the transfer by its holders (i.e. the participating clubs or entities) to the organising entity (e.g. the professional football league ) of the ability to jointly commercialise the audiovisual rights to broadcast live and/or retransmit, in full or in summarised and/or fragmented versions of the football matches in which they participate.

Thus, although the ownership of the audiovisual rights of the matches of the professional football competitions is attributed to the participating clubs or entities through self-regulation, the royal decree establishes the obligation to transfer the ability to jointly commercialise them to the professional football league or federation. These entities are obliged to market the rights assigned by means of awarding and exploitation systems that respect the principles of equality and freedom to conduct business and within the general framework of national and EU competition rules.<sup>680</sup>

With respect to the First and Second Division National League Championship in Spain, it is the National Professional Football League (*La Liga*), as the organising entity, which is responsible for jointly marketing the audiovisual rights over broadcast football matches of the clubs or entities participating in such competitions. More specifically, *La Liga* is a producer in conformity with Article 7 of RDL 5/2015. This article foresees the creation of an organ within *La Liga* to establish the pattern for the production and execution of audiovisual recording of the official professional competitions it organises, in order to ensure a common style that promotes the integrity of the competition, compliance with the regulations in force regarding the holding of the games, and the

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<sup>678</sup> See for example, judgment of the Supreme Court of 25 June 2013; EDJ 2013/140039, in section 6.9.4.2. of this country report.

<sup>679</sup> [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2015-4780](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-4780)

<sup>680</sup> For further details about the selling of sports-related audiovisual rights in Spain, see also: Cabrera Blázquez F.J., Cappello M., Fontaine G., Valais S., “Audiovisual sports rights – between exclusivity and right to information”, IRIS Plus, European Audiovisual Observatory, Strasbourg, 2016, pp. 45 and 46, <https://rm.coe.int/iris-plus-2016-2-sport-rights-en/168078835d>.

value of the product. The role of producer recognised by RDL 5/2015 coincides with the role of producer defined in Article 120(2) of the LPI in Spain, which provides the following: “The producer of an audiovisual recording is the natural or legal person which has the initiative and assumes the responsibility of such recording.”

In the case of the *Copa de S.M. el Rey* and the *Supercopa de España*, the Royal Football Federation in Spain (*Real Federación Española de Fútbol*) is in charge of marketing the audiovisual rights.<sup>681</sup>

On the other hand, broadcasts of sports events can be protected from different points of view. If they have been the object of a recording, they benefit from the protection established in Article 120 and following of the LPI for producers of audiovisual recordings, (i.e. the exclusive right to authorise the reproduction of the original of the first fixation of the recording and copies of it, its communication to the public, and its distribution). Once they have been broadcast by broadcasters, they benefit from the protection established in Article 126 and following of the LPI for broadcasting entities (i.e. broadcasting organisations hold the right to authorise the fixation of their broadcast or signals, their reproduction, communication to the public and distribution).

Legal actions, either in civil or criminal proceedings, or those brought before the Second Section of the Intellectual Property Commission (IPC) may be brought both by the original rightsholders (sports clubs, as confirmed in the Explanatory Memorandum of Act 5/2015 of 30 April in the case of football), and by the assignees of such rights (sports league organisers). Broadcasters may also exercise actions as assignees and as original owners of the audiovisual recordings. In practice, as far as football is concerned, most of the actions against piracy of sports events are brought by the organisers of the events, mainly the *Liga Nacional de Fútbol Profesional* and the *Real Federación Española de Fútbol*, and by broadcasters.

### 6.9.2.3. Other specific rules applicable to sports events

Law 7/2010, of 31 March 2010 (General Audiovisual Communication) provides, in its Article 19.3, the possibility of broadcasting short news summaries of events of general interest by the rest of the providers that have not contracted their broadcast in exclusivity. In addition, Article 1 of RDL 5/2015 also refers to this provision for the purpose of allowing the broadcasting of summaries of sports events of general interest.

There is no regulation governing the use of sports content in social media.

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<sup>681</sup> Audiovisual rights of live and/or deferred broadcasting in their entirety or in summarised and/or fragmented versions of the matches.

**Table 61. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
<b>Broadcaster</b>	No	Related rights (also in practice as producer)
<b>Sports event organiser</b>	No	Licensee for the commercialisation of the audiovisual rights

*Source: Spanish response to European Audiovisual Observatory standardised survey*

### 6.9.3. Remedies and sanctions applicable in the event of infringement

#### 6.9.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

Under civil law, Article 138 and following of the LPI establish two types of measures to safeguard IP rights: injunctions and compensatory measures. In addition, the possibility of requesting precautionary and urgent measures in certain circumstances is also regulated.

In particular, according to Article 138 of the LPI on “Injunctions and urgent precautionary measures”, the rightsholder may, without prejudice to any other action that may be available to him/her, apply for an injunction restraining the unlawful activity of an infringer and claiming reparation for material and moral damages caused. The protection includes the publication of the judicial resolution or arbitration award. Any person who knowingly induces the infringing content, or cooperates with the infringement, and any person who, having a direct economic interest in the results of the infringing conduct, has the capacity to control the infringer’s conduct, will also be considered liable for the infringement (without prejudice to specific limitation of liability established in Articles 14 to 17 of Act 34/2002, dated 11 July, on Information Society Services and Electronic Commerce). The rightsholder may likewise apply, on a prior basis, for the ordering of precautionary measures for immediate protection, as provided in Article 141 of the LPI.

Moreover, under Article 139 of the LPI on “cessation of the unlawful activity”, the restraining of the unlawful activity may include suspending or prohibiting the infringing activity; withdrawing from the market and destroying/disabling any material used for the creation/reproduction/manufacture of unlawful copies; removing/confiscating/disabling or destroying the instruments whose sole purpose is to facilitate the circumvention of



technical devices; suspending the services provided by intermediaries to third parties who use them to infringe IP rights.

Article 140 of the LPI provides for the damages the aggrieved party is entitled to request, which shall be set, according to the choice of the aggrieved party, either based on the negative economic consequences, including the *lucrum cessans* suffered and the profits that the infringer may have obtained from his/her unlawful use (moral prejudice shall also entitle to damages); or the money the aggrieved party would have received if the infringer had requested a licence to use the copyright in question.

Precautionary measures are also available to the rightsholder, pursuant to Article 141 of the LPI, in the event of infringement or where there are good and reasonable grounds to fear that infringement is imminent. These may consist in the seizure and deposit of revenue earned through the unlawful activity, or the suspension of the services provided by intermediaries to third parties who use them to infringe IP rights, as far as online piracy is concerned. The precautionary measures shall cease to have effect if the relevant lawsuit is not submitted, pursuant to the provisions of Act 1/2000 on Civil Judicial Proceedings.

The actions contemplated in Article 138 and following of the LPI can be exercised in the case of piracy of sports events. In particular, as mentioned above, both the specific cessation activities foreseen in Article 139.1h) and the precautionary measures set out in Article 141.6 may also be requested, if appropriate, against the intermediaries whose services are used by a third party to infringe IP rights, even though the acts by such intermediaries are not in themselves an infringement. Such measures shall be objective, proportionate and non-discriminatory.

Concerning the protection of technological measures and rights management information (Articles 6–7 of the InfoSoc Directive), Article 196 of the LPI provides for the prohibited acts of circumvention and preparatory acts related to technological measures, which are subject to civil law sanctions and remedies as well as penal sanctions according to Article 286 of the Spanish Penal Code (which transposes Article 5 of the Conditional Access Directive). Article 286 PC establishes punishment by imprisonment of six months to two years and a fine from 6 to 24 months to any person who, without the consent of the service provider and for commercial purposes, provides access to a radio or television broadcasting service, to interactive services provided remotely by electronic means, or who provides conditional access to these, by means of i) the manufacturing, importation, distribution, making available by electronic means, sale, rental, or possession of any computer equipment or program that is unauthorised in another EU member state, designed or adapted to make such access possible; ii) the installation, maintenance or replacement of such equipment or computer programs; iii) the alteration or duplication of the identification number of telecommunications equipment or the sale of equipment that has undergone fraudulent manipulation.

In addition, Article 286 PC provides for the same punishment for any person who, for non-profit purposes, provides third parties access to such protected works or subject matter, or who, through public communication, whether for commercial purposes or not, provides information to multiple persons on how to obtain unauthorised access to a



service or the use of such a device or program, inciting them to do so. Whoever uses equipment or programs that allow unauthorised access to conditional access services shall have the punishment envisaged in Article 255 PC imposed, regardless of the amount obtained by such fraud.

Although Article 286 PC provides for sanctions for infringement of conditional access services and not for infringement of copyright or related rights in the content, there is no doubt that online piracy of sports content is carried out, to a large extent, through the unauthorised facilitation of access to radio or television services (e.g. illegal Internet Protocol Television – IPTV), which is precisely what Article 286 PC sanctions. In other words, the realisation of the typical acts provided for in Article 286 PC, such as the manufacture and marketing of illicit devices, is motivated mainly by and has as its main objective the facilitation of access to broadcasting services that broadcast sports events. Therefore, and given that most of the acts of piracy of sports events and content are produced precisely through the illicit facilitation of access to these broadcasting services, it is possible to resort to the criminal proceedings provided for in Article 286 PC provided that the circumstances (commercial purposes, among others) required therein are met.

More generally, both criminal and civil action will be possible in cases of online piracy of sports events, depending in each case on how this type of piracy takes place and the circumstances of the case. The infringed provision will be different depending on whether the type of piracy consists of making unauthorised content available to the public through links, for example, or whether it involves the manipulation of technological protection measures, or whether there is a profit motive (in which case criminal proceedings may be brought).

#### 6.9.3.2. National bodies with competences on copyright enforcement

In Spain, the national body with competences on infringements of copyright is the Second Section of the IPC (hereinafter also referred to as the “Second Section”), an administrative body under the Ministry of Culture. The function of the Second Section is to restore legality in the digital field with respect to cases of infringement of IP rights by the person in charge of an information society service (ISS), provided that the responsible party – directly or indirectly – acts for profit or has caused or is likely to cause pecuniary damage to the holder of such rights.

The Second Section of the IPC is composed of the Head of the Secretariat of State for Culture (or the person delegated by him/her), acting as chair, and four members appointed by the Ministries of Education, Culture and Sport, Industry, Energy and Tourism, Presidency, and Economy and Competitiveness from among the personnel of the public administrations.

The Second Section of the IPC can order measures such as removal orders and injunctions.

### 6.9.3.3. Codes of conduct and Memorandums of Understanding

Article 95.8 of the LPI (which regulates the procedure for the reestablishment of legality in the digital environment) provides that voluntary codes of conduct may be developed with regard to the measures for the collaboration of intermediation services, electronic payment services or advertising services. However, as of today, no code of conduct has been adopted at national level to fight against online piracy (without prejudice to those that may have been adopted by different companies at a particular level).

In 2018, the Ministry of Culture and Sport drafted a voluntary code of conduct with the participation of the Secretary of State for Digital Advancement. This document was intended to seek the voluntary alliance of rightsholders, internet operators and advertisers against services infringing IP rights.

As a follow up to this first initiative, a code of conduct, the “Protocol to strengthen the protection of intellectual property rights” (*Protocolo para el refuerzo de los derechos de propiedad intelectual*) was signed in April 2021 by the members of the Coalition of Creators and Content Industries (*La Coalición de Creadores e Industrias de Contenidos*) and the Spanish Association for Digitalisation (*Asociación Española para la Digitalización – DigitalES*)<sup>682</sup> as well as by the Eureka and Euskaltel groups, under the auspices of the Ministry of Culture and Sport. The overall purpose of the agreement is to provide a comprehensive response to the efforts that both operators and creators are making to improve the enforcement of existing legislation on the protection of IP rights by ensuring the effectiveness of judicial and administrative rulings that have declared a given digital service to be an infringer of copyright. Its aim has been to encourage dialogue in order to achieve medium and long-term self-regulation that will contribute to promoting a legal digital offer of cultural content and reduce the infringement of these rights.

The protocol, which has been reviewed and favourably considered by the National Commission for Markets and Competition (*Comisión Nacional de los Mercados y la Competencia*, CNMC), will be applicable to those websites whose infringement of IP rights has been judicially declared, with measures of suspension of internet access services, provided that certain conditions of repetition of the illegal conduct are met. In addition, the document proposes the establishment of a Technical Committee in which the Ministry of Culture and Sport may intervene at the invitation of any of the parties.

### 6.9.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

Since 2011, in addition to civil and criminal proceedings, there has been an administrative procedure (called “safeguarding legality in the digital environment”)

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<sup>682</sup> <http://www.culturaydeporte.gob.es/dam/jcr:a4a9c334-3208-4753-807a-7424e8629a7d/boletin-seccion-segunda-cpi-es.pdf>, page 6.





regulated by Article 195 of the LPI. Although this procedure goes beyond the notice and take-down procedure provided for under the E-Commerce Directive, as it is based on orders issued by an administrative authority, it is described by the Spanish authorities as a kind of notice and take-down mechanism.

In particular, Article 195 of the LPI states that the Second Section of the IPC shall exercise the functions of safeguarding IP rights against infringement by those responsible for ISSs by means of a procedure whose purpose shall be the restoration of legality, which is aimed at two types of providers:

- providers of ISSs that infringe IP rights (based on their level of audience in Spain, and on the number of protected works and services that can be accessed through the service or business model);
- providers of ISSs that infringe IP rights by facilitating the description or location of works and services that are offered without authorisation, developing for this purpose an active and non-neutral activity, and that are not limited to mere technical intermediation activities (e.g. by offering ordered and classified lists of links to the works and services referred to above, regardless of whether such links may be initially provided by the recipients of the service).

The procedure shall be initiated *ex officio*, following a complaint filed by the rightsholder (or by the person entrusted by him/her), who must provide reasonable evidence of the previous unsuccessful attempt to request the withdrawal of the allegedly infringing ISS. This prior notice may be considered, when appropriate, for the purpose of generating effective knowledge in the terms established in Articles 16 and 17 of Act 34/2002, of 11 July 2002, provided that it identifies exactly the work or service, the rightsholder and a location where the work or service is offered in the ISS. The attempt to request the withdrawal will be considered unsuccessful if the requested provider does not answer or, despite answering, does not remove or disable access to the corresponding content within three days from the submission of the corresponding request. The collective management organisations are entitled to initiate this procedure under the terms of Article 150 of the LPI. The resolution issued by the Second Section in this procedure shall terminate the administrative proceedings.

The Second Section may adopt measures to interrupt the provision of an ISS that infringes IP rights or to remove content that infringes the aforementioned rights, if the provider has caused or is likely to cause pecuniary damage. Such measures may include technical measures and specific duties of care required of the infringing provider aimed at ensuring the cessation of the infringement and preventing its resumption. The Second Section may extend the measures of withdrawal or interruption to other sufficiently identified protected works or subject matter whose rights are represented by the parties involved in the proceedings, which correspond to the same rightsholder or which belong to the same type of works or subject matter, provided that there are facts or circumstances revealing that the works or subject matter in question are likewise offered unlawfully.



Before proceeding to the adoption of these measures, the provider of an ISS must be notified so that within a period not exceeding 48 hours it may proceed to the voluntary withdrawal of the infringing content or, where appropriate, present arguments and submit evidence on the authorisation of use or the applicability of a limit to the IP right. Once the previous term has elapsed, where appropriate, evidence shall be examined within two days and the interested parties shall be informed of the conclusions within a maximum term of five days. The Second Section shall issue a decision within a maximum period of three days.

In the case of lack of voluntary withdrawal, the Second Section may request the collaboration of the providers of ISSs, electronic payment services and advertising services, by requiring them to suspend the corresponding service that they provide to the infringing provider. In the adoption of these collaborative measures, the Second Section will evaluate the possible effectiveness of those measures aimed at blocking the financing of the provider of ISSs declared to be the infringer. The blocking of an ISS by internet access providers must be adequately justified in terms of its proportionality, taking into account the possible effectiveness of other available measures. In the event that the service is provided using a domain name under the country code corresponding to Spain or another top-level domain whose registration is established in Spain, the Second Section shall notify the registration authority of the facts for the purpose of cancelling the domain name, which may not be reassigned for a period of at least six months.

Any failure to cooperate on the part of providers of ISSs, electronic payment services or advertising services will be considered as an infringement of the provisions of Article 11 of Act 34/2002, of 11 July 2002. If the ISS provider does not remove or block infringing content, rightsholders can request the court to order the ISS provider to execute the collaborative measure. If the ISS provider fails to comply with requests for removal of infringing content, resulting from final resolutions, this shall constitute a very serious administrative infringement punishable by a fine of between EUR 150 001 and EUR 600 000. The resumption on two or more occasions of unlawful activities by the same provider of ISSs shall also be considered a repeated breach. When justified by the seriousness and social repercussions of the infringing conduct, the infringement may entail the publication of the sanctioning resolution and the cessation of the infringing activities of the ISS provider for a maximum period of one year (and the possibility to suspend electronic payment services and advertising services to the infringing provider).

When the infringements have been committed by ISS providers established in non-EU/EEA countries but whose services are specifically directed towards the Spanish territory, the body that has imposed the corresponding sanction may order the intermediation service providers to take the necessary measures to prevent access from Spain to the services offered by them for a maximum period of one year.

The Minister of Culture and Sport shall be responsible for the imposition of sanctions. The person conducting the sanctioning procedure may incorporate into the file the actions that were part of the related procedures processed by the Second Section in the exercise of its function of safeguarding IP rights established in the previous section.

According to the last report on the activities of the Second Section dated 31 March 2021, since the start of its activity in 2012, the Second Section of the IPC has ordered the blocking or removal of infringing content from more than 300 infringing websites. Since 2019, more than 640 000 protected works or objects that were being offered to the public through infringing websites have been removed.<sup>683</sup>

#### 6.9.3.5. Removal and blocking orders

As previously mentioned, three possible actions can be exercised against cases of online piracy of audiovisual sports content by rightsholders.

Firstly, civil actions as foreseen in Articles 138 and following of the LPI are settled through ordinary proceedings before the Commercial Courts (*Juzgados de lo Mercantil*), and include:

- actions for cessation that can be brought against the infringer (including the figures of the "inducer", the "cooperator" and the person who "having an economic interest in the results of the infringing conduct has the capacity to control it"), but also against the intermediaries whose services are used by a third party to infringe IP rights, even if the acts themselves do not constitute an infringement
- actions for damages that can only be exercised against the infringer/s
- actions and urgent precautionary measures that may be exercised against the infringer and, in some cases, also against the third-party intermediaries used by the infringers to commit the infringement (for example, the suspension of the services provided by these intermediaries).

Secondly, two types of actions can be brought and settled in the criminal courts:

- crimes against intellectual property (Articles 272 and following PC), punishable in criminal proceedings if there is intention to obtain a direct or indirect economic benefit and the act is carried out "to the detriment of a third party".
- the crime of facilitating intelligible access to a radio or television broadcasting service according to Article 286 of the Criminal Code. This is not a crime against IP rights but falls within the so-called crimes against the market and consumers.

Thirdly, administrative actions are provided by Articles 195 and following of the LPI, through the procedure before the Second Section of the IPC, which is characterised by its speed (no more than four months), and whose decisions may be appealed before the Contentious-Administrative Courts (see description at paragraph 1.1.3.4.).

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<sup>683</sup> Boletín trimestral de la Sección Segunda de la CPI, 31 March 2021, <https://www.culturaydeporte.gob.es/dam/jcr:a4a9c334-3208-4753-807a-7424e8629a7d/boletin-seccion-segunda-cpi-es.pdf>



Regarding the availability of dynamic and live blocking injunctions, Spanish law does not expressly mention specific measures (it only refers to blocking measures). However, the wording is sufficiently broad to allow the implementation of measures whose purpose is not only to achieve the cessation of the infringing conduct but also its resumption. Thus, for example, Article 195.4 of the LPI states that the Second Section of the IPC may adopt measures to interrupt the provision of an ISS that infringes IP rights or to remove infringing content, provided that the provider has caused or is likely to cause economic damage. The provision specifies that such measures may include technical measures and specific duties of care required on the part of the infringing provider to ensure the cessation of the infringement and prevent its resumption.

According to Article 195.5 of the LPI, providers of ISSs, electronic payment services and advertising services may also be required to suspend the corresponding service they provide to the infringing provider in order to ensure the effectiveness of the measure, giving special importance to those measures aimed at blocking the financing of the service provider declared to be infringing. The aim is to combine the principles of proportionality and effectiveness in the adoption of the measures (in the same sense as in Article 22 RD 1889/2011, of 30 December, which regulates the operation of the IPC).

Although the orders to block and close websites can take place as a result of the exercise of a measure in civil proceedings, in criminal proceedings or in administrative proceedings (as a result of a procedure before the Second Section), most of these measures are adopted as a result of proceedings initiated before the Second Section. In fact, according to a report published by this body, in 2019 it carried out the blocking of 93 pirate websites and more than 60 000 protected works or subject matters, increasing its activity by 443% compared to 2018.

#### 6.9.3.6. Measures against end-users

Spanish law does not expressly mention specific measures; however, the wording is sufficiently broad to allow the implementation of measures whose purpose is not only to achieve the cessation of the infringing conduct but also its resumption. Furthermore, in Spanish legislation, the only data that may be collected from the providers of infringing services is the data necessary to identify such a provider and to be able to follow a judicial proceeding against it, and under no circumstances may content, traffic or location exceeding the scope or purpose of the proceeding be requested.

In practice, the measures adopted by Spanish courts are always applied against subjects who carry out an activity on a large scale, which generally means an activity carried out for profit and generating a patrimonial damage to the owners.

On this point, the Second Section of the IPC, in order to initiate the procedure for safeguarding legality in the digital environment (as required by Article 195 of the LPI), must take into account the "level of audience in Spain, and the number of protected works and services that can be accessed through the service or its business model", allowing the adoption of measures when "the provider has caused or is likely to cause pecuniary damage".

For its part, the adoption of measures in criminal proceedings requires, in accordance with the provisions of Article 270 PC, that the conduct is carried out for profit and "to the detriment of a third party".

#### 6.9.3.7. Criminal sanctions

Crimes against intellectual property are punishable by a penalty of less than nine years' imprisonment, in accordance with the provisions of the abbreviated procedure, regulated in Articles 757 and following of the Criminal Procedure Law (LECRIM). According to Article 14 LECRIM, the investigating judge of the place where the crime was committed is competent, or the investigating judge of the place where material evidence of the crime has been discovered or where the alleged offender has been apprehended or his/her place of residence. The procedure includes an investigation phase; an intermediate phase, where the prosecution files the prosecution report in which it establishes the punishable act and its legal qualification, the participation of the defendant, the circumstances and the penalty it considers appropriate; and the oral trial phase, after which the sentence – which may be appealed – will be issued.

In terms of sanctions, these range from imprisonment for between six months and four years and a fine of 12 to 24 months in cases of an act of reproduction and/or communication to the public not consented to by the owner(s), or one involving the circumvention of a technological measure with the intention of obtaining a direct or indirect economic benefit; facilitation of access to or the location on the internet of works or services subject to IP protection without the authorisation of the owner(s) of the corresponding rights or their assignee(s) in order to obtain a direct or indirect economic benefit; exportation or storage of copies of the works, productions or communication to the public, including digital copies, etc.

In addition, imprisonment for a term of six months to three years can be applicable in cases of circumvention of technical measures as mentioned above.

A prison sentence of two to six years, a fine of 18 to 36 months and special disqualification from the exercise of the profession related to the crime committed, for a period of two to five years, shall be imposed if the benefit obtained or the benefit that could have been obtained has special economic relevance; if the facts are particularly serious, in terms of value, or the special importance of the damages caused.

**Table 62. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sport content copyright	No, national law on copyright



Specific features on sports	Description
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial authorities)	Second Section of the IPC, an administrative body under the authority of the Ministry of Culture
Entitlement to take legal action	Yes, for rightsholders and assignees
Codes of conduct	Yes, Protocol to strengthen the protection of IP rights ( <i>Protocolo para el refuerzo de los derechos de propiedad intelectual</i> )
Specific proceedings	Yes (specific procedure under the Second Section of the IPC)
Specific remedies	No

Source: Spanish response to European Audiovisual Observatory standardised survey

**Table 63. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	Yes
Removal and blocking injunctions	Yes
Dynamic and/or live blocking injunctions	Yes
De-indexing injunctions	Yes
Damages and orders to cease and desist	Yes
Administrative offence and remedies	Yes
Notice and take-down procedures	Yes

Source: Spanish response to European Audiovisual Observatory standardised survey

#### 6.9.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions, in relation to online infringement of audiovisual sports content.



**Table 64. Relevant case law related to copyright infringements of audiovisual sports content**

Content	Substance of the decision	Decisions
<b>Communication to the public</b>	<p>Audiovisual recording of sports content is considered a copyrighted work.</p> <p>Qualification of web pages that make available to the public links to sports content.</p>	<p>STS of 25 June 2013; EDJ 2013/140039</p> <p>Provincial Court of A Coruña, of 28 December 2018, ROJA DIRECTA; EDJ 2018/712343</p>
<b>Hosting providers' knowledge and awareness of illegal activity</b>	<p>Activity carried out for profit corresponds to unlawful nature of the conduct.</p>	<p>No. 6 of Barcelona of 12 January 2017 (EDJ 2017/305790), Commercial Court</p> <p>Provincial Court of Madrid – Order of 15 April 2016</p>
<b>Notice and take-downs</b>	N/A	N/A
<b>Measures aimed at end-users</b>	<p>Blocking internet access to websites in which protected audiovisual content was present without the prior consent of the rightsholders.</p> <p>Blocking illegal access to several web pages that made available to the public broadcasts and retransmissions of soccer matches without authorisation from the rightsholders.</p> <p>De-indexing of infringing pages from search engines</p> <p>Suspending the advertising service</p>	<p>Commercial Court No. 6 of Barcelona, Spain (EDJ 2017/305790)</p> <p>Commercial Court of Madrid No. 7 of 11 February 2020</p> <p>Orders of the Central Contentious-Administrative Court of Madrid No. 3, of 25 October 2019 (EDJ 2019/748751), of 20 April 2016 (EDJ 2016/513385); and of the Central Contentious-Administrative Court of Madrid No. 12, of 19 July 2019 (EDJ 2019/668530)</p> <p>Orders of the Central Contentious-Administrative Court of Madrid No. 3, of 25 October 2019 (EDJ 2019/748751)</p> <p>Central Contentious-Administrative Court of Madrid No. 12, of 19 July 2019 (EDJ 2019/668530)</p>
<b>Criminal sanctions</b>	<p>Imprisonment; special disqualification; penalty of a fine; subsidiary liability in case of non-payment</p>	<p>Criminal Court of Huelva No. 2, of 11 November 2019</p> <p>Criminal Court of Málaga No. 4, of 9 October 2019</p>

Source: Spanish response to European Audiovisual Observatory standardised survey



#### 6.9.4.1. Communication to the public

Spanish courts have ruled on the communication to the public of sports content on many occasions and several issues have been debated.

Firstly, the debate has arisen on the possible qualification of sports events as intellectual works. In this regard, the Supreme Court has pointed out that sports events do not constitute works protected by intellectual property since they are not original literary, artistic or scientific creations expressed by any means or medium, tangible or intangible, and specifically they are not "creations expressed by means of a series of associated images, with or without incorporated sound", which is how Article 86.1 of the LPI defines audiovisual works. Notwithstanding the foregoing, some Spanish courts have come to understand that although sports events do not constitute works, they do have the consideration of other services protected by intellectual property, either as audiovisual recordings that generate rights in favour of the producer or as broadcasts of the broadcasting entities themselves.<sup>684</sup>

Secondly, with regard to the qualification of web pages that make links to sports content available to the public, the Spanish courts have applied the doctrine of the Court of Justice of the European Union (CJEU) in the *Svensson*, *GS Media* and *Pirate Bay* cases. Notably, they have been understanding that the introduction of links to protected sports events, with full knowledge of their content (this can be shown by the fact that the owner can catalogue and define the content and insert it under the corresponding heading of the event published in an updated sports calendar) determines that the website owner is acting as a content provider and not as a mere intermediary (host), carrying out an act of making such content available to the public without the consent of the rightsholder(s).<sup>685</sup>

#### 6.9.4.2. Online infringement of audiovisual sports content

In order to bring a civil action for infringement of IP rights, it is necessary that the conduct constitutes a civil offence and, in particular, that the act in question constitutes an act of reproduction and/or communication to the public not consented to by the owners, or that the act involves the circumvention of a technological measure. The placement of links to protected content without the authorisation of the owners constitutes, according to the jurisprudence of Spanish courts, an act of making available to the public. In order to bring a civil action, it is not necessary for the conduct to be carried out for profit.

Civil actions may be brought against the direct infringer, but also against (i) whoever knowingly induces the infringing act; (ii) whoever cooperates with the infringing conduct, knowing that the conduct constitutes an infringement or having reasonable

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<sup>684</sup> STS of 25 June 2013; EDJ 2013/140039

<sup>685</sup> Provincial Court of A Coruña, of 28 December 2018, ROJA DIRECTA; EDJ 2018/712343



grounds to know it; and (iii) whoever, having a direct economic interest in the results of the infringing conduct, has the capacity to control the infringer's conduct.

Some relevant cases concerning online piracy of audiovisual sports content may be highlighted.<sup>686</sup> For example, in a judgement of 25 June 2013,<sup>687</sup> the Supreme Court ruled on several important issues: (i) the recordings of sporting events are not considered copyrighted works insofar as they lack the minimum level of originality and creativity; (ii) notwithstanding the above, audiovisual recordings of sporting events generate for their producer "neighbouring rights" of an exclusively economic nature; and (iii) for such neighbouring rights to be generated, it is necessary that the audiovisual recording exists as such (i.e. such rights cannot be generated by contract if the audiovisual recording has not been made).<sup>688</sup>

In an important judgement of 28 December 2018,<sup>689</sup> the Court of Appeal of A Coruña held that the activity carried out through the website ROJA DIRECTA, where links to most of the matches of each round of the Spanish professional soccer competition are uploaded in a classified and organised manner, constitutes a clear infringement of IP rights because (i) the act of linking constitutes a communication to a new public, as is clear from the judgments of the CJEU in the *Svensson* and *GS Media* cases, among others; (ii) in no case can the website allege a lack of knowledge of the content uploaded by users, since the website itself classifies and organises the content and, furthermore, several complaints had been filed against it for such activity. Given that there is "actual knowledge" of the unlawfulness on the part of the defendant, it cannot avail itself of the exemption from liability that Article 17 of the Law on Information Society Services provides for certain intermediaries.<sup>690</sup>

In Spain, most of the actions against piracy of sporting events are brought by the event organisers, mainly the *Liga Nacional de Fútbol Profesional* and the *Real Federación Española de Fútbol*. This does not mean that broadcasters do not initiate legal action against piracy of sporting events. An example would be the decision of Commercial Court No. 7 of Madrid of 11 February 2011, issued in a proceeding initiated by *TELEFÓNICA AUDIOVISUAL DIGITAL, S.L.U.*

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<sup>686</sup> <https://www.poderjudicial.es/search/AN/openDocument/d1ecc270d29d6605/20200219>

<sup>687</sup> Sentence of the Supreme Court of 25 June 2013 (EDJ 2013/140039)

<sup>688</sup> See also, sentence of the Provincial Court of Vizcaya of 20 May 2011 (EDJ 2011/187387).

<sup>689</sup> Sentence of the Provincial Court of A Coruña, of 28 December 2018, ROJA DIRECTA (EDJ 2018/712343)

<sup>690</sup> Other relevant decisions include: Order of the Provincial Court of Burgos of 8 October 2020 (EDJ 2020/703577); Order of the Provincial Court of Vizcaya of 18 November 2019 (EDJ 2019/822089); Order of the Provincial Court of Vizcaya of 5 December 2019 (EDJ 2019/841779); Order of the Provincial Court of Madrid of 20 June 2019 (EDJ 2019/724792); Order of the Provincial Court of Madrid of 2 July 2020 (EDJ 2020/638725); Order of the Provincial Court of Madrid of 15 April 2016 (EDJ 2016/102838); sentence of the Provincial Court of Madrid of 24 February 2012 (EDJ 2012/39733); sentence of Commercial Court No. 7 of Madrid, of 11 February 2020.



### 6.9.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

Regarding the concept of "actual knowledge" referred to in Article 17 of Law 34/2002 of 11 July, on Information Society Services and Electronic Commerce (Article 14 of the E-Commerce Directive), Spanish courts pointed out that in order to give evidence of the existence of "effective knowledge" it is not necessary for there to be a judicial decision declaring the unlawfulness of the act, but it is sufficient that there is the possibility of other means of effective knowledge that could be established, such as knowledge

*that is obtained by the service provider from facts or circumstances capable of enabling, albeit indirectly or by logical inferences within the reach of anyone, an effective apprehension of the reality in question.*

In this sense, it would be enough, for example, for complaints to have been filed – whether in civil, criminal or administrative proceedings – by the rightsholders to consider that there is effective knowledge that the content uploaded to the website or platform without the consent of the rightsholders is protected and that, therefore, the activity is unlawful.<sup>691</sup>

For this purpose, the Commercial Court pointed out in a judgment that the fact that the illegal activity was carried out for financial gain (the websites in question feed off advertising) and that the owners of the domain names had voluntarily opted to conceal their identity were significant circumstances which pointed to the unlawful nature of the conduct.<sup>692</sup>

Furthermore, the Provincial Court of Madrid, in its Order of 15 April 2016, pointed to the fact that the matches of the Spanish professional soccer league are well-defined events and public information is available in advance in terms of when they will be played and who has the right to broadcast them, in addition to the fact that they are broadcast for a paying audience. All of this was indicative of the defendant's actual knowledge that a good number of the links contained in its page allowed access to content to the detriment of the rights of a third party whose identity was also known.

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<sup>691</sup> Provincial Court of A Coruña, 28 December 2018 (EDJ 2018/712343), in which the sentences of the Supreme Court of 4 March 2013, 26 February 2013 and 4 December 2012 are referenced.

<sup>692</sup> No. 6 of Barcelona of 12 January 2017 (EDJ 2017/305790)



#### 6.9.4.4. Notice and take-down requirements

In order to bring an action before the Second Section of the IPC, the requirements established in Article 195 of the LPI, mentioned above, must be met.

#### 6.9.4.5. Removal and blocking orders

As well as ordering measures against direct infringers, Spanish courts are currently also ordering measures against different intermediaries. The first judgment issued in civil proceedings that agreed the adoption of measures against Internet Service Providers (ISPs) was a judgment of the Commercial Court.<sup>693</sup> The Spanish court gave a judgment in proceedings brought by various audiovisual producers belonging to the Motion Picture Association of America (MPAA) against a number of telecommunications companies who provide internet access. The proceedings were aimed at having the latter take measures to block internet access to certain websites that were making protected audiovisual content available to the public without the mandatory consent of rightsholders. Several cinematographic works and television series that were uploaded to the internet without the consent of rightsholders could be streamed via the websites HDFULL.TV and REPELIS.TV. Both websites contained video content from third companies and used the services of a company called Cloudflare to conceal the specific location of the sites that they use. In the aforementioned judgment, the action was not directed against the owner of the links platform or website but against the telecommunications companies who provide internet access. In reaching the conclusion that the claimants were entitled to bring injunctive action against companies which merely granted internet access to the owners of websites that provide links to protected content in a systematic and ordered manner, the court considered that: (i) the defendants were information society intermediaries, as defined in Act 34/2002; (ii) Articles 138 and 139.1.h) of the Spanish Copyright Act expressly state that such intermediaries have standing to be sued; (iii) CJEU case law (*Scarlet Extended*)<sup>694</sup> and some decisions of the Spanish courts recognised internet access providers' standing to be sued in injunctive actions for copyright infringement; and (iv) such injunctions may be requested not just against the access provider or the owner of the websites containing the infringing content, but also against "intermediaries who transmit" the infringement online.

Another recent example of legal action brought against internet access providers is the decision of Commercial Court of Madrid No. 7 of 11 February 2020.<sup>695</sup> In this case,

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<sup>693</sup> No. 6 of Barcelona, Spain (EDJ 2017/305790)

<sup>694</sup> CJEU C-70/10, *Scarlett Extended S.A. vs. SABAM*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62010CJ0070>

<sup>695</sup> *Juzgado de lo Mercantil No. 7, Madrid (Commercial Court No. 7 of Madrid, Telefónica Audiovisual Digital v. Vodafone Espana et al.* decision No. 2174/2019, ECLI:ESJMM:2020:2, <https://www.poderjudicial.es/search/AN/openDocument/d1ecc270d29d6605/20200219>



TELEFÓNICA AUDIOVISUAL DIGITAL, S.L.U. (broadcaster) sued the main Spanish internet access providers for not taking measures to stop access to websites offering unlicensed distribution of live football matches through illicit IPTV services. The defendants acquiesced to all the claims and measures asked for by the applicant. In this particular case, the court did not enter into the merits of the case<sup>696</sup> and, therefore, did not analyse the legal framework applicable to dynamic blocking injunctions. The judge upheld the claim and ordered the defendants to take several actions to cease the unlawful activities identified. The costs had to be borne by the defendants, since they gave their acquiescence in the response to the claim (in such cases the defendants are obliged by law to bear the costs). The blocking injunctions imposed by the court were twofold:

(i) Static blocking injunctions: the sued ISPs had to block, within 72 hours of the notification of the judgment, the URLs, domain names and IP addresses belonging to 44 pirate sites and services; the ISPs should block at the level of both HTTP and HTTPS protocols, and were expected to take any access prevention action they could; the injunction is limited to three years, covering three football seasons 2019–2022; ISPs will have to report back to Telefónica Audiovisual Digital and notify the exact time when they blocked access to newly added web resources.

(ii) Dynamic blocking injunctions: the authorised broadcaster will update the blocking list weekly with new entries (sites, IP addresses, URLs) related to the 44 pirates sites mentioned in the judgment and send it directly and simultaneously to the ISPs without a new court order; ISPs will be given three hours to respond to new entries; the dynamic injunction lasts until 25 May 2022.<sup>697</sup>

With regard to search engines, it is common for courts to order the de-indexing of infringing pages from search engines.

Spanish courts have differentiated the measures against different intermediaries, i.e. ISPs, search engines, and advertising services.

Some concrete examples of the application of measures are as follows:

- In proceedings against the person(s) responsible for the ISS, [www.lomusical.com](http://www.lomusical.com), where musical content was made available to the public without the authorisation of the owners, the following measures were adopted: (i) removal of the infringing content (ii) in the absence of voluntary removal: a) suspension of the advertising service; b) de-indexing of the infringing web pages and c) suspension of the internet access service in relation to the domain name [www.lomusical.com](http://www.lomusical.com).<sup>698</sup>

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<sup>696</sup> According to Spanish law, in such cases the court issues an order without entering into the merits of the case, unless the claim was done in bad faith, goes against the public order or prejudices the rights of third parties.

<sup>697</sup> See also EUIPO, Study on dynamic blocking injunctions in the European Union, pages 94–95 [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_Dynamic\\_Blocking\\_Injunctions/2021\\_Study\\_on\\_Dynamic\\_Blocking\\_Injunctions\\_in\\_the\\_European\\_Union\\_FullR\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_Dynamic_Blocking_Injunctions/2021_Study_on_Dynamic_Blocking_Injunctions_in_the_European_Union_FullR_en.pdf).

<sup>698</sup> Order of Central Contentious-Administrative Court of Madrid No. 3, 25 October 2019 (EDJ 2019/748751).



- In proceedings against the person(s) responsible for the ISSs, [www.booksmedicos.org](http://www.booksmedicos.org) and [www.booksmedicos.me](http://www.booksmedicos.me), the following measures were adopted: (i) the suspension of the advertising service; (ii) the suspension of the hosting intermediation service offered to the pages mentioned; (iii) its removal by the search engine services; and (iv) the suspension and blocking in a real and effective manner of the internet access service from the Spanish territory in relation to the domain name [www.booksmedicos.org](http://www.booksmedicos.org) and [www.booksmedicos.me](http://www.booksmedicos.me).<sup>699</sup>
- In another judgement, the criminal judge ordered the blocking of access from the Spanish territory to two web pages “as well as their successors”.<sup>700</sup>

In another judgment, the Commercial Court ordered the adoption of the following measures against the owner of the website [www.rojadirecta.me](http://www.rojadirecta.me), where links to different national and international soccer competitions were located: (i) the immediate cessation of the provision of internet links of any kind, giving access to live or slightly delayed viewing of soccer matches, through the website [www.rojadirecta.me](http://www.rojadirecta.me); (ii) the cessation, in general, of any other unlawful use of content whose exclusive exploitation corresponds to the claimants; (iii) a prohibition to prevent them from using or exploiting any technological or computer support or system to provide the service of live or slightly deferred viewing of soccer matches produced or broadcast by the plaintiffs; (iv) orders requiring that, until the defendants prove to the court that they have complied with such orders, the providers of ISSs recognised in the Registry of Operators of the Telecommunications Market Commission suspend the transmission, data hosting, access to telecommunications networks or the provision of any other equivalent intermediation service in relation to [www.rojadirecta.me](http://www.rojadirecta.me) or any other web page that the defendants could use on the same terms, or that redirects to said site in order to provide access to it, thereby blocking or impeding access from Spanish territory to said internet pages; (v) a declaration that the defendants’ conduct has caused damages to the claimants and, consequently, that they are jointly and severally liable to indemnify the claimants for the damages caused, leaving the determination of such damages for later proceedings; and (vi) an order requiring the defendants to publish, at their own expense, the heading and conclusion of the judgment by means of advertisements in the national editions of the newspapers *El Pais* and *El Mundo*, and also to publish the same text on the home screen of the ROJADIRECTA website for at least two weeks.<sup>701</sup>

#### 6.9.4.6. Measures against end-users ordered by the courts

No case law of measures against end-users has been detected in Spain.

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<sup>699</sup> Order of Central Contentious-Administrative Court of Madrid No. 12, 19 July 2019 (EDJ 2019/668530).

<sup>700</sup> Sentence of the Criminal Court of Huelva No. 2, 11 November 2019 (EDJ2019/737649).

<sup>701</sup> Sentence of Commercial Court No. 2 of A Coruña, 22 November 2016;

#### 6.9.4.7. Compensation criteria adopted by the courts

In Spanish law, the concepts of “punitive”, “statutory” and “alternative” damages do not apply. The concept under which the infringer has to pay a compensation for the damages caused differs depending on whether it is a civil, criminal or administrative action.

When an infringer is liable in civil proceedings, he/she must compensate the claimant for the damages caused. Article 140 of the LPI offers the plaintiff the possibility of requesting compensation according to two alternative criteria: a) “The negative economic consequences, including the loss of profits suffered by the injured party and the profits that the infringer has obtained from the unlawful use.” (Provincial Court of Vizcaya, Sentence of 20 May 2011) and b) “The amount that the injured party would have received as remuneration if the infringer had requested authorisation to use the intellectual property right in question.” This is known as a “hypothetical royalty”. The Provincial Court of Madrid decided in this sense in its sentence of 15 April 2011.

Additionally, compensation for moral damages may be requested, the amount of which will depend on the circumstances of the infringement, the seriousness of the injury and the degree of unlawful dissemination of the work.

In the case of a criminal action, the PC provides for the establishment of economic sanctions that depend on the seriousness of the infringement (sentence of the Provincial Court of Madrid, of 24 October 2018).

Article 195 of the LPI provides for the imposition of fines of between EUR 150 001 and EUR 600 000 in the event of repeated failure by the same ISS provider to comply with injunctions to remove content declared to be infringing.

#### 6.9.4.8. Criminal sanctions ordered by the courts

In order to bring a criminal action, the conduct must fall within the criminal offence described in Article 270 PC and two circumstances must be added to the conduct constituting the civil wrongful act: (i) the intent to obtain a direct or indirect economic benefit and (ii) that the act is performed “to the detriment of a third party”. If both conditions are not met, even if the copyright of a third party is infringed, it will be a civil offence, but not a criminal offence. Moreover, the act of making sporting events available to the public can also constitute an offence against consumers as defined in Article 286 PC.

Spanish courts have applied criminal sanctions to online piracy of audiovisual sports content. The most relevant decisions are as follows:

- The judge imposed the following sanction on a company for selling to its customers a router, a decoder with the company’s logo and a remote control, with which its customers could access the content of pay channels that broadcast soccer matches of LIGA NACIONAL DE FÚTBOL PROFESIONAL and MEDIAPRODUCCIÓN S.L.U. with foreign broadcasting rights without the consent of



the service provider, and the customers acquired television packages with such content in exchange for a monthly fee.

- The administrator of the company received a penalty of six months in prison (later suspended due to the lack of a prior criminal record), special disqualification from the right to passive suffrage during the time of the sentence and a six months' fine, at the rate of EUR 10 per day, with subsidiary personal liability in accordance with the provisions of Article 53 C.P. in the event of non-payment.
- The company (OLIVENET NETWORK S.L.) received the penalty of a fine of EUR 40 000, in accordance with the provisions of Article 288.1. PC.
- In respect of civil liability, the defendants shall jointly and severally indemnify La Liga in the amount of EUR 200 000 for the damages suffered, MEDIAPRODUCCIÓN S.L.U. in the amount of EUR 200 000 for the damages suffered and EGEDA in the amount of EUR 20 463 for the damages suffered.<sup>702</sup>

On the other hand, the following are some of the sanctions applied by the Second Section of the IPC:

- a fine of EUR 400 000 imposed on the web pages [www.exvagos.com](http://www.exvagos.com), [www.exvagos1.com](http://www.exvagos1.com) and [www.exvagos2.com](http://www.exvagos2.com) for the commission of a very serious infringement of the LPI, consisting of the resumption, on two or more occasions, of illegal activities involving infringement of IP rights on the internet, in addition to the cessation of the activity
- a fine of EUR 375 000 imposed on the web pages [www.x-caleta.com](http://www.x-caleta.com) and [www.x-caleta2.com](http://www.x-caleta2.com), in addition to the cessation of the activity, for failure to comply with requests for the removal of content declared to be infringing or the resumption of unlawful activities by the same ISS provider on two or more occasions, considered as a very serious infringement of IP rights.

## 6.9.5. Reports and studies

Several studies regarding online piracy of protected content have been published in Spain. Regarding online piracy of all types of content, there is an annual report by *La Coalición de creadores e industrias de contenidos* called "Observatory of piracy and consumption habits of digital content 2019"<sup>703</sup> and which is conducted by the independent consulting firm GFK. According to this study, in 2019 digital piracy in Spain experienced a decrease of 5% compared to 2018 and of 17% since 2015. Regarding the form of access to illegal content, there is evidence of a slight increase in the contribution of search engines, from the 60% recorded in 2018 to 62%. Of these, Google remains the most used: 9 out of

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<sup>702</sup> Sentence of the Criminal Court of Málaga No. 4, 9 October 2019.

<sup>703</sup> [http://lacoalicion.es/wp-content/uploads/ejecutivo-obs.pirateria\\_2019.pdf](http://lacoalicion.es/wp-content/uploads/ejecutivo-obs.pirateria_2019.pdf).

10 instances of access to pirated content are produced from its search results; greater collaboration with this sector is therefore necessary in order to prevent this from happening. However, the most outstanding feature is the increase in the use of social networks as a means to access illicit content (from 21% to 23% in 2019): Facebook (58%), YouTube (54%), Whatsapp (35%), Instagram (33%), Twitter (26%) or Telegram (25%). Similarly, online streaming grew (from 17% in 2018 to 22% in 2019) for the fourth consecutive year.

One of the most innovative and alarming data involves equipment: 29% of internet users have an IPTV decoder and 21% have accessed a Virtual Private Network (VPN) for personal use; 38% of internet users have made use of tutorials on how to access such content. Of these, 15% have consulted guides on how to download content, 9% have sought help in obtaining or using platforms, and 14% have used manuals for both purposes.

Regarding soccer, the study points out that access through illegal channels decreased in 2019 compared to 2018, with increasing access through legal services. The study estimates that the value of piracy in the soccer sector amounted to EUR 372 million in 2018.

Regarding digital piracy in general, the Second Section of the IPC publishes an annual report with a balance of data. The latest publication is dated 31 March 2020. According to this report, in 2019 the Second Section would have executed the blocking of 93 infringing websites and more than 60 000 content that infringed IP rights. Partially, this large increase in websites blocked by the Second Section was due to the blocking in Spain of more than 60 domains linked to the “ThePirateBay” scheme. This means that the Second Section increased its activity by 443% with respect to the shutting down of infringing websites obtained in 2018.

Concerning piracy of sports events, the company Smart Live Protection has prepared a document entitled “Pirate consumption of live events on the internet”, which analyses the behaviour of consumers of live events online and their position against pirate offers. With regard to reliable sources used for illegal streaming of sports content, the report affirms that 53% of the people who watch live events use Facebook and 41% of the people surveyed have watched sporting events through IPTV. Of those people, 50% paid for the service through social networks, Google or marketplaces.

On the contrary, no studies have been published in Spain describing the legal supply of online sports content.

In terms of awareness-raising activities, the leading awareness campaigns against online piracy are mainly carried out by *La Coalición de creadores e industrias de contenidos*.<sup>704</sup> *La Coalición* has presented several editions of the educational workshop

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<sup>704</sup> *La Coalición* represents most of the cultural and entertainment sector in Spain. It brings together the content and intellectual property defense industries in the audiovisual, music, book publishing and videogame markets. Its mission is to promote and develop as many activities as it deems necessary to prevent the infringement of intellectual property rights on the internet.





programme "*Defiende tu cultura*", which provides training and awareness in schools on the value of creation, creators and the consequences of digital piracy for employment, the economy and society. IP rights management organisations also carry out anti-piracy campaigns in their respective fields.<sup>705</sup>

In the field of sports, and more specifically regarding soccer, the most active entity in relation to online piracy in Spain is *La Liga*. This association has its own team of lawyers in charge of managing the legal processes that surrounds its activities and a team of technology experts who have developed a series of tools aimed, precisely, at putting an end to piracy. As reported on their website in the 2019/20 season, *La Liga* removed 903 000 videos on YouTube (100% of those reported) and 375 862 on social networks (95% of those reported).

## 6.9.6. Data compilation

This country report is based on data compiled by Patricia Mariscal Garrido-Falla, PhD Lawyer at BARDAJÍ&HONRADO ABOGADOS.

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<sup>705</sup> <https://www.cedro.org/actualidad/noticias/noticia/2020/05/06/cedro-consigue-bloqueo-122-canales-telegram-pirateria>; <https://www.promusicae.es/news/view/13-noticias/62-espana-soporta-casi-un-96-por-ciento-de-indice-de-pirateria-musical-en-la-red>; <https://www.agedi.es/index.php/actividades-y-servicios/prevencion>.



## 6.9.7. Annex

**Table 65. Overview of relevant transposition measures**

EU directives	National law
Conditional Access Directive 98/84/EC	Spanish Penal Code
Article 5 of Conditional Access Directive 98/84/EC – Infringing activities	Article 286 providing for six months' imprisonment and a fine from six to twenty-four months
InfoSoc Directive 2001/29/EC	Law 23/2006, of 7 July 2006, which amends the consolidated text of the Intellectual Property Law; Penal Code
Article 6 InfoSoc – Obligations as to technological measures	Article 196 of Law 23/2006
Article 8 InfoSoc paragraphs 1 and 2 – Sanctions and remedies	Article 270 PC
IPRED 2004/48/EC	Law 19/2006, of 5 June, which extends the means of protection of intellectual and industrial property rights and establishes procedural rules to facilitate the application of various community regulations.
Article 6 IPRED – Evidence and Article 7 IPRED – Measures for preserving evidence	Article 1. Six of Law 19/2006, amending Article 297 of Law 1/2000 of 7 January, Code of Civil Procedure
Article 8 IPRED – Right of information	Article 1. One of Law 19/2006, amending Article 256 of Law 1/2000, of 7 January, Code of Civil Procedure.
Article 9 IPRED – Provisional and precautionary measures	Article 2. Two of Law 19/2006, amending Article 138 of the Intellectual Property Law
Article 10 IPRED – Corrective measures	Article 2. Three of Law 19/2006, amending Article 139 of the Intellectual Property Law
Article 11 IPRED – Injunctions	N/A
Article 12 IPRED – Alternative measures	N/A
Article 13 IPRED – Damages	Article 2. Four of Law 19/2006, amending Article 140 of the Intellectual Property Law
E-Commerce Directive 2000/31/EC	Act 34/2002, of 11 July, on Information Society Services and Electronic Commerce
Articles 12–15 E-Commerce Directive – Liability of intermediary service providers	Articles 14, 15 and 16
Article 17 E-Commerce Directive – Out-of-court dispute settlement	Article 32
Article 20 E-Commerce Directive – Sanctions	Articles 37–45
DSM Directive EU 2019/790	Royal Decree-law 24/2021 of 2 November 2021

## 6.10.FI – Finland – National legal summary<sup>706</sup>

### 6.10.1. General legal framework

#### 6.10.1.1. National legislation on copyright<sup>707</sup>

In Finland, there are several laws that regulate the scope and the enforcement of copyright and related rights:

- The Copyright Act 404/1961 (*Tekijänoikeuslaki – the Copyright Act*)<sup>708</sup>
- The Copyright Decree 574/1995 (*Tekijänoikeusasetus*)<sup>709</sup>
- The Decree on the application of the Copyright Act in certain cases to protected items originating in States belonging to the European Economic Area 575/1995 (*Asetus tekijänoikeuslain soveltamisesta eräissä tapauksissa Euroopan talousalueeseen kuuluvista valtioista peräisin oleviin suojan kohteisiin*)<sup>710</sup>
- The Criminal Code of Finland 39/1889 (*Rikoslaki 49 luku*)<sup>711</sup>
- The Act to Safeguard Evidence in Civil Actions Concerning Intellectual Property Rights 344/2000 (*Laki todistelun turvaamisesta teollis- ja tekijänoikeuksia koskevissa riita-asioissa*)<sup>712</sup>
- The Information Society Code 917/2014 (*Laki sähköisen viestinnän palveluista*)<sup>713</sup>
- The Act on the Use of Orphan Works 764/2013 (*Laki orpoteosten käyttämisestä*)<sup>714</sup>

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<sup>706</sup> The country report on Finland incorporates the feedback received from Viveca Still (Ministry of Education and Culture) during the checking round with the national competent institutions.

<sup>707</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>708</sup> English: <https://www.finlex.fi/en/laki/kaannokset/1961/en19610404.pdf>;

Finnish: <https://finlex.fi/fi/laki/ajantasa/1961/19610404>.

<sup>709</sup> <https://finlex.fi/fi/laki/ajantasa/1995/19950574>.

<sup>710</sup> <https://finlex.fi/fi/laki/smur/1995/19950575>.

<sup>711</sup> [https://finlex.fi/en/laki/kaannokset/1889/en18890039\\_20150766.pdf](https://finlex.fi/en/laki/kaannokset/1889/en18890039_20150766.pdf); <https://finlex.fi/fi/laki/ajantasa/1889/18890039001>

<sup>712</sup> <https://www.finlex.fi/fi/laki/ajantasa/2000/20000344A>.

<sup>713</sup> English: <https://finlex.fi/en/laki/kaannokset/2014/en20140917.pdf>;

Finnish: <https://finlex.fi/fi/laki/ajantasa/2014/20140917>



- The Act on the Collective Management of Copyright 1494/2016 (*Laki tekijänoikeuden yhteishallinnoinnista*)<sup>715</sup>
- The Code of Judicial Procedure 4/1734 (*Oikeudenkäymiskaari*).<sup>716</sup>

In Finland, a copyright infringement may be considered both a criminal offence and a civil law violation.

Criminal sanctions are based on section 56a (Copyright violation) of the Copyright Act and Chapter 49 section 1 (Copyright offence) of the Criminal Code. A copyright violation requires a wilful action or negligence and results in a fine.<sup>717</sup> If the copyright infringement is made for profit and in a manner conducive to causing considerable detriment or damage, the person committing the infringement shall be sentenced for a copyright offence to a fine or to imprisonment for a maximum of two years. However, there is no profit requirement for a copyright offence in a situation where the infringement is done by a person using a computer network or information system (Chapter 49 section 1(3) of the Criminal Code).

Civil sanctions and remedies may also be applicable to criminal offences.

#### 6.10.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>718</sup> has not been transposed to date (as at October 2021). A draft government proposal is currently subject to public consultations, ending on 31 October 2021.<sup>719</sup>

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<sup>714</sup> English: <https://finlex.fi/en/laki/kaannokset/2013/en20130764.pdf>;

Finnish: <https://finlex.fi/fi/laki/ajantasa/2013/20130764>

<sup>715</sup> English: <https://www.finlex.fi/en/laki/kaannokset/2016/en20161494.pdf>

Finnish: <https://www.finlex.fi/fi/laki/alkup/2016/20161494>

<sup>716</sup> English: [https://www.finlex.fi/en/laki/kaannokset/1734/en17340004\\_20150732.pdf](https://www.finlex.fi/en/laki/kaannokset/1734/en17340004_20150732.pdf);

Finnish: <https://finlex.fi/fi/laki/ajantasa/1734/17340004000>.

<sup>717</sup> With reference to online piracy of audiovisual sports content, it may constitute either a violation or an offence if, for example, the case involves the illegal possession, use, manufacture, etc. of devices aimed at circumventing technological protective measures.

<sup>718</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

<sup>719</sup> Finnish: <https://www.lausuntopalvelu.fi/FI/Proposal/Participation?proposalId=bf2bc712-ff6e-4a23-81de-91581bc2bf81&proposalLanguage=da4408c3-39e4-4f5a-84db-84481bafc744>;

Swedish: <https://www.lausuntopalvelu.fi/FI/Proposal/Participation?proposalId=bf2bc712-ff6e-4a23-81de-91581bc2bf81&proposalLanguage=9ff64fe9-04da-4471-9f0c-3f2016e71b4f>.

**Table 66. Regulatory framework**

EU directive	National law
DSM Directive	N/A
Intellectual Property Rights Enforcement Directive (IPRED)	Act to Safeguard Evidence in Civil Actions Concerning Intellectual Property Rights <sup>720</sup> Amendment to the Copyright Act <sup>721</sup>
Information Society (InfoSoc) Directive	Copyright Act and Law 14.10.2005/822; Criminal Code (39/1889) <sup>722</sup>
E-Commerce Directive	Information Society Code (917/2014) <sup>723</sup>
Conditional Access Directive	Information Society Code (917/2014) <sup>724</sup> ; Criminal Code (39/1889) <sup>725</sup>

Source: Finnish response to European Audiovisual Observatory standardised survey

## 6.10.2. National rules applicable to audiovisual sports content

### 6.10.2.1. Legal definitions of “broadcaster” and “sports event organiser”

In Finnish law, there is no definition of “broadcaster”. However, in the Copyright Act, a broadcaster is referred to as a “transmitting organisation”. Also, according to subparagraph 26 of section 3 of the Information Society Code, “television broadcasting means the authentic and simultaneous transmission of programmes consisting of audiovisual programmes to the audience on the basis of a programme schedule”.

There is no legal definition for “sports events organiser” or “sports events broadcast” in Finnish law.

<sup>720</sup> <https://www.finlex.fi/fi/laki/ajantasa/2000/20000344A>.

<sup>721</sup> <https://finlex.fi/fi/laki/alkup/2006/20060679>.

<sup>722</sup> [https://finlex.fi/en/laki/kaannokset/1889/en18890039\\_20150766.pdf](https://finlex.fi/en/laki/kaannokset/1889/en18890039_20150766.pdf);  
<https://finlex.fi/fi/laki/ajantasa/1889/18890039001>.

<sup>723</sup> English: <https://finlex.fi/en/laki/kaannokset/2014/en20140917.pdf>;  
Finnish: <https://finlex.fi/fi/laki/ajantasa/2014/20140917>.

<sup>724</sup> English: <https://finlex.fi/en/laki/kaannokset/2014/en20140917.pdf>;  
Finnish: <https://finlex.fi/fi/laki/ajantasa/2014/20140917>.

<sup>725</sup> English: [https://finlex.fi/en/laki/kaannokset/1889/en18890039\\_20150766.pdf](https://finlex.fi/en/laki/kaannokset/1889/en18890039_20150766.pdf);  
Finnish: <https://finlex.fi/fi/laki/ajantasa/1889/18890039001>.



### 6.10.2.2. Legal protection related to sports events

The sports event itself is not protected as an object of copyright or related rights under Finnish copyright law. However, a sports event broadcast may be partially protected by copyright if it includes works, such as music, that are protected by copyright. On this point, the Finnish Supreme Court has also concluded that a commentary of a soccer game constitutes a work protected by copyright.<sup>726</sup>

The rights of sports event organisers can be seen as being based on the ability to control access to the event (i.e. a type of “house right”).<sup>727</sup> Therefore, a sports event organiser may be able to contractually agree on the media and broadcasting rights.<sup>728</sup>

On the other hand, the protection of the audiovisual recording is based on sections 46 and 46a of the Copyright Act, which grant the exploitation rights (reproduction, distribution, communication to the public) to the producer of the recording.

Furthermore, broadcasters hold related (or “neighbouring”) rights in the broadcast signals, which are protected by section 48 of the Copyright Act. According to section 48(1), a radio or television broadcast may not, without the consent of the broadcasting organisation, be retransmitted or recorded on a device enabling its reproduction. Nor may it be performed publicly on premises to which the public has access against payment, without the consent of the broadcaster. Section 48(3) of the Copyright Act specifies that this provision also applies to any other programme-carrying signal than radio or television broadcasts. Moreover, in the preparatory legislative work of the Information Society Code, it is explained that the term “television broadcasting” is not linked to any specific technology.<sup>729</sup> Therefore, section 48 of the Copyright Act could potentially also cover online transmissions by broadcasters.

In case of infringement of copyright and related rights, broadcasters and rightsholders are entitled to take legal action on the basis of the Copyright Act. Sports event organisers may take legal action on the basis of non-statutory rights and contractual provisions, if these have been infringed.

### 6.10.2.3. Other specific rules applicable to sports events

There is no specific protection for sport event organisers in Finnish legislation. There are no specific rules regarding the use of sports content in social media in Finland.

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<sup>726</sup> KKO 1988:52 <https://finlex.fi/fi/oikeus/kko/kko/1988/198800520>.

<sup>727</sup> Consumer legislation and contractual principles may, however, set limits on the organiser’s ability to set restrictions.

<sup>728</sup> See, for example, Anette Alén-Savikko, “*Urheilun liikkuvasta kuvasta – tekijänoikeudellinen näkökulma*”, *Urheilu ja oikeus* 2014, pp. 37-41.

<sup>729</sup> Government proposal (HE) 221/2013, p.89.

**Table 67. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
<b>Broadcaster</b>	No	Related rights
<b>Sports event organiser</b>	No	Right to control access to the event (i.e. house right) and exploitation rights (“media and broadcasting rights”); entitlement to take legal action based on contractual provisions.

*Source: Finnish response to European Audiovisual Observatory standardised survey*

### 6.10.3. Remedies and sanctions applicable in the event of infringement

#### 6.10.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

In the case of infringement of copyright or related rights, the Copyright Act provides for the following civil sanctions and remedies: the prohibition against infringement (section 56g); reasonable compensation (section 57 subsection 1); damages (section 57 subsection 2); forfeiture (section 58); the disclosure of contact information (section 60a); injunction claims (section 60b); discontinuation orders (section 60c); interim discontinuation orders (section 60d); and blocking orders (section 60e). Civil sanctions and remedies based on other national laws include the confiscation of materials which may have significance as evidence (section 3 of the Act to Safeguard Evidence in Civil Actions Concerning Intellectual Property (344/2000); precautionary measures to ensure temporary legal protection (Chapter 7, section 3 of the Code of Judicial Procedure) and notice and take-down procedures (Information Society Code (917/2014) sections 189-194).

In cases where the audiovisual sports content is either protected by copyright (for example, if it contains some elements subject to copyright protection, such as music) or by the related rights of producers and/or broadcasters (as provided in Chapter 5 of the Copyright Act), these remedies may all be applicable depending on the circumstances of the case.

Concerning the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive as transposed in Chapter 5a of the Copyright Act), section 50a of the Copyright Act provides for the prohibition to circumvent a technological measure protecting a work covered by the Copyright Act. The expression



“technological measures” is similar to the definition given in the InfoSoc Directive, where it means any

*technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the rightsholder of any copyright or any right related to copyright (...), which achieves the protection objective.*

Section 50a also provides for exemptions to the prohibition if the technological measure, is circumvented in course of research or education relating to cryptology or if a person who has lawfully obtained the work circumvents the technological measure in order to be able to listen to or view the work. Furthermore, section 50b provides for the prohibition to produce and distribute to the public (including through the manufacturing and importation) devices, products or components enabling or facilitating the circumvention of an effective technological measures. Such products and services are those which are promoted, advertised or marketed for the purpose of circumventing; those whose purpose or use other than circumvention has only limited commercial significance; or those which are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of effective technological measures protecting works.

Section 56a of the Copyright Code provides for specific sanctions for copyright violations consisting in the circumvention of technological measures. In particular, anyone who wilfully or out of gross negligence infringes 1) the prohibition to circumvent a technological measure, as provided in section 50a or 2) the prohibition to produce or distribute devices for circumventing technological measures, as provided in section 50b, shall be sentenced, unless the act is punishable as a circumvention of a technological measure under section 3 of Chapter 49 of the Criminal Code or as an offence of a device for circumventing a measure under section 4 of the Chapter, to a fine for a violation of a technological measure.

Moreover, according to section 269(2) of the Information Society Code, the illegal possession, use, manufacture, importing, offering for sale, leasing, distribution, sales promotion, installation and maintenance of any system or part of a decoding system is prohibited in cases where such a system or part thereof is intended primarily for unlawful decoding of technical protection and accessing protected television broadcasts, radio broadcasts or remote services personally requested by a recipient. A violation of this prohibition is an offence involving a system for accessing protected services where a person produces, imports, offers for sale, rents out or distributes a system for accessing protected services, or advertises, installs or maintains the same for commercial purposes or so that the act is conducive to causing considerable damage or loss to a provider of protected services (section 269(2) of the Information Society Code).





The sanction for a decoding system violation<sup>730</sup> is a fine, whereas the sanction for an offence involving a system for accessing protected services is a fine or imprisonment for a maximum of one year. If the act constitutes an offence, Chapter 10 of the Criminal Code requires forfeiture of the proceeds of the crime (section 2), the instrument of crime (section 4) and certain other property (section 5).

With reference to online piracy of audiovisual sports content, it may constitute either a violation or an offence, if the case involves the illegal possession, use, manufacture, importing, offering for sale, leasing, distribution, sales promotion, installation and maintenance of any system or part of a decoding system where such a system or part thereof is intended primarily for unlawful decoding of technical protection and accessing protected television broadcasts, radio broadcasts or remote services personally requested by a recipient.

#### 6.10.3.2. National bodies with competences on copyright enforcement

In Finland, there is no national authority other than judicial bodies with specific competences to address infringements of copyright.

#### 6.10.3.3. Codes of conduct and Memorandums of Understanding

There are no codes of conduct or Memorandums of Understanding relating to the enforcement of intellectual property rights and the fight against online piracy adopted by public and/or private entities.

#### 6.10.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

The requirements to be followed by the rightsholder are provided by sections 189-194 of the Information Society Code. In particular, according to section 189, a holder of copyright and/or related rights or his/her representative may request the hosting service provider to prevent access to material infringing this copyright and/or related right. A request must first be presented to the content provider whose material the request concerns. If the content provider cannot be identified or if it does not remove the material or prevent access to it expeditiously, the request may be submitted to the hosting service provider by notification prescribed in section 191 of the Information Society Code.

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<sup>730</sup> As per section 347 of the Information Society Code, anyone who violates a prohibition related to any decoding system or part of a decoding system shall be imposed a fine for a decoding system violation, unless a more severe penalty is provided elsewhere in law.



With regard to the form and content of the notification, section 191 states that the notification shall be made in writing or electronically so that the content of the notification cannot be unilaterally altered and it remains available to the parties. The notification shall include: (i) the name and contact information of the notifying party; (ii) an itemisation of the material for which prevention of access is requested and details of the location of the material; (iii) confirmation by the notifying party that the material which the request concerns is, in its sincere opinion, illegally accessible in the communications network; (iv) information concerning the fact that the notifying party has submitted its request to the content provider in vain or that the content provider could not be identified; (v) confirmation by the notifying party that he/she is the holder of copyright or related rights or is entitled to act on behalf of the rightsholder; (vi) the signature of the notifying party.

According to section 192, the information society service provider (hosting service provider) shall immediately notify the content provider of prevention of access to the material supplied by him/her and supply the content provider with a copy of the notification on the basis of which such prevention was made.

If the content provider considers that the prevention is groundless, he/she may get the material returned by delivering to the notifying party a plea in writing or electronically, within 14 days from receiving the notification. The plea must include: (i) the name and contact information of the content provider; (ii) the facts and other reasons for which prevention is considered groundless; (iii) an itemisation of the material for which prevention is considered groundless; (iv) the signature of the content provider.

If this plea meets the abovementioned requirements, the information society service provider must not prevent the material from being kept available unless this is stipulated in an agreement between the service provider and the content provider or in a decision made by a court or other authority. Section 194 provides a liability to compensate for damages (unless the notifying party had reasonable grounds to assume that the information is correct or if the false information is only of minor significance).

Although audiovisual sports content may not be protected by copyright, subject to conditions of originality (as sports events do not enjoy copyright protection), it is nonetheless protected by related rights (under section 48 of the Copyright Act which protects radio and television broadcast signals). Therefore, a notice and take-down procedure could be applicable when unauthorised content is made available online. However, the notice and take-down procedure may not be fast enough to work in practice for some live streaming services. Removal and blocking orders

The available injunctions in the Copyright Act are: the prohibition against infringement (section 56g); injunction claims (section 60b); discontinuation orders (section 60c); interim discontinuation orders (section 60d); and blocking orders (section 60e).

Section 56g is the general injunction that provides that “[i]f a person infringes the copyright, the Court of Justice may prohibit him to proceed with or repeat the act”.



The claim for an injunction, foreseen by section 60b is narrower and applies only in relation to persons making copyright-infringing material available to the public, as follows:

*[f]or the purpose of prohibiting continued violation, the author or his representative has the right to take legal action against the person who makes the allegedly copyright-infringing material available to the public (alleged infringer). In allowing the action, the court of justice shall at the same time order that the making available of the material to the public must cease. The court of justice may impose a conditional fine to reinforce the order.*

Sections 60c (discontinuation order), 60d (interim discontinuation order) and 60e (blocking order) are blocking injunctions aimed at an intermediary, which is defined by the Copyright Act as “a maintainer of the transmitter, server or other device or any other service provider acting as an intermediary”. Sections 60c and 60d are directly linked to the injunction claim based on section 60b (claim for an injunction), whereas section 60e is an independent blocking order.

A blocking order based on section 60c (discontinuation order) may be given by the court during the proceedings, through which the court orders the intermediary to discontinue, under threat of a fine, the making available to the public of the allegedly copyright-infringing material (discontinuation order). A prerequisite for issuing a discontinuation order is that the order cannot be regarded as unreasonable in view of the rights of the alleged infringer, the intermediary, the recipient of the content and the author. The order shall not prejudice the rights of a third party to send and receive messages. If the reason for the issuing of the discontinuation order ceases to exist, the court shall, upon application by a concerned party, order the order to be cancelled.

A blocking order based on section 60d (interim discontinuation order) can be given prior to the proceedings upon application by the author or his/her representative against an unknown infringer if it is obvious that the rights of the author would otherwise be severely prejudiced. A claim for an injunction based on section 60b against the actual infringer will have to be submitted to the court within two months from the issuing of the interim discontinuation order. If deemed necessary due to the urgency of the matter, the court may issue an interim discontinuation order even if the alleged infringer cannot be identified if significant amounts of allegedly copyright-infringing material is made available to the public without the author’s consent; or if it is obvious that the rights of the author would otherwise be severely prejudiced.

Section 60e is an independent blocking order against an unknown infringer if an injunction claim against an infringer cannot be filed. In such a case, the court may order an intermediary to block, under threat of a fine, the making available to the public of the allegedly copyright-infringing material (blocking order). The requirements for the order are that: (i) significant amounts of the allegedly copyright-infringing material are made available to the public without the author’s consent or that it is obvious that the rights of the author would otherwise be severely prejudiced; (ii) the applicant of the blocking order



indicates the measures taken to identify the alleged infringer; (iii) issuing a blocking order would not be unreasonable in view of the rights of the alleged infringer, the intermediary, the recipient of the content and the author; (iv) the blocking order shall not prejudice the rights of a third party to send and receive messages; and (v) the intermediary shall have the opportunity to be heard. The blocking order is issued for a fixed period (maximum of one year) and may be extended for “a well-founded reason”. It may also be cancelled upon application, if the cause of the blocking order has ceased to exist.

These injunction procedures are applicable to infringements against copyright protected works and to infringements against rights related to copyright (based on sections 60 and 60g of the Copyright Act) and therefore, depending on the circumstances, may be also applicable in situations relating to online piracy of audiovisual sports content. According to section 60g of the act, only holders of copyright and/or related rights and their representatives may apply for such injunctions. They can also potentially be used to block illegal online streaming services based on sections 60c, 60d or 60e. However, the process may not be fast enough in some cases.

Dynamic injunctions are not applicable in Finland.

#### 6.10.3.5. Measures against end-users

Measures against end-users are not provided (or applied) in Finland.

#### 6.10.3.6. Criminal sanctions

Criminal sanctions and remedies are provided by the Criminal Code and the Copyright Act in the case of copyright offences and copyright violations. They could potentially apply to online piracy of audiovisual sports content.

The provisions relating to copyright offences are included in Chapter 49 of the Criminal Code, and also apply to related rights. Section 1(1) of Chapter 49 lays down the conditions for a general copyright offence, and can be summarised as requiring that the act in question is committed: (i) in violation of the Copyright Act; (ii) by a private person or legal person (based on section 7 of Chapter 7); (iii) in a manner conducive to causing considerable detriment or damage to the person holding a right; and (iv) for profit.

With regard to online infringement, it is important to note that section 1(3) of the Criminal Code does not require acting for profit as a condition in cases where the infringement is carried out by a person using a computer network or information system.

The provisions relating to copyright violations are included in Chapter 7 of the Copyright Act and also apply to related rights (section 60 of the Copyright Act). Section 56a of Chapter 7 lays down the conditions for a general copyright violation and can be summarised as requiring that the act in question is committed: (i) in violation of the Copyright Act; (ii) by a private or legal person; (iii) wilfully or out of gross negligence. In contrast to the copyright offence, there is no requirement that the act should effectively cause damage or detriment. There is also no profit requirement. The sentence for

copyright violations shall consist in a fine, unless the act is punishable as a copyright offence under the Criminal Code.

Fines are applicable both to copyright violations and copyright offences, but imprisonment can only be imposed for copyright offences.

Furthermore, the Copyright Act and the Criminal Code also include provisions criminalising the circumvention of technical measures (as described in section 50a of the Copyright Act) and the production or distribution of devices for circumventing technological measures (as described in section 50b of the Copyright Act). A violation based on section 56e of the Copyright Act requires acting wilfully or out of gross negligence. According to section 3 of Chapter 49 of the Criminal Code,

*[a] person who in violation of the prohibition in section 50a of the Copyright Act and so that the act is conducive to causing considerable detriment or damage circumvents an effective technical measure protecting a work, shall be sentenced for circumvention of technical protection to a fine or to imprisonment for at most one year.*

Section 4 of the same chapter includes a similar provision for the offence of circumventing technical measures, for cases relating to the production or distribution of devices designed to circumvent technological measures, also resulting in a fine or imprisonment for a maximum of one year.

**Table 68. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial bodies)	No
Entitlement to take legal action	Yes, rightsholders (broadcaster, producer, etc.)
Codes of conduct	No
Specific proceedings	No
Specific remedies	No

Source: Finnish response to European Audiovisual Observatory standardised survey



**Table 69. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	Yes
Removal and blocking injunctions	Yes
Dynamic and/or live-blocking injunctions	No
De-indexing injunctions	No
Damages and orders to cease and desist	Yes
Administrative offence and remedies	No
Notice and take-down procedures	Yes

Source: Finnish response to European Audiovisual Observatory standardised survey

#### 6.10.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions in relation to online infringement of audiovisual sports content.

**Table 70. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
Communication to the public	N/A	N/A
Hosting providers' knowledge and awareness of illegal activity	The liability exemption provided by Article 14 of the E-Commerce Directive does not apply in the event that the service provider facilitates the illicit conduct.	Finnish Supreme Court, the Finreactor case – KKO:2010:47, paragraphs 31-32
Notice and take-downs	N/A	N/A
Measures against end-users	N/A	N/A
Criminal sanctions	N/A	N/A

Source: Finnish response to European Audiovisual Observatory standardised survey

#### 6.10.4.1. Communication to the public

In Finland, there are no cases related to the concept of communication to the public and copyright infringement of audiovisual sports content.

#### 6.10.4.2. Online infringement of audiovisual sports content

In Finland, there are no cases related to online infringement of audiovisual sports content.

#### 6.10.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

With regard to knowledge and awareness, the Finnish Supreme Court concluded that the essential requirement for the liability exemption based on Article 14 of the E-Commerce Directive is that the hosting provider's actions are purely technical. If the hosting service provider effectively knows that the activity constitutes an infringement and proactively facilitates such unlawful conduct by maintaining the service, the liability exemption provided in Article 14 of the E-Commerce Directive does not apply.<sup>731</sup>

#### 6.10.4.4. Notice and take-down requirements

The requirements are provided in sections 189-194 of the Information Society Code (917/2014) as described in section 6.10.3.4.

In 2019, notice and take-down requests of one major organisation representing rightsholders named the Copyright Information and Anti-Piracy Centre, led to the removal of 1 977 videos from YouTube and the same organization sent 171 other notice and take-down or enforcement letters. However, these requests did not specifically relate to the illegal online transmission of sports events.

#### 6.10.4.5. Removal and blocking orders

With reference to removal and blocking orders, Finnish courts only blocked access to materials in a few cases concerning file-sharing services. It seems that notice and take-

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<sup>731</sup> *Finreactor KKO:2010:47*, paragraph 31-32; <https://www.finlex.fi/fi/oikeus/kko/kko/2010/20100047>.

down requests have been the most widely used measure, although overall statistics have not been detected.

In practice, the courts have addressed the blocking order to ISPs, for instance in the Pirate Bay case<sup>732</sup> and a case involving Rarbg- ja Yify-torrent services<sup>733</sup> where the court ordered an internet service provider, or in the latter case providers, to block their subscribers from accessing the file-sharing service in question.

Among the requirements set out in section 60e of the Copyright Act for a court to issue a blocking order to an intermediary against an unknown infringer, the applicant must indicate the measures taken to identify the alleged infringer. In practice, the measures taken by the applicant to identify the alleged infringer have played a major role in the court's evaluation. Based on government bill 181/2014 (pp. 34 and 58), the applicant should, for example, take actions to attempt to identify the internet service provider of the alleged infringer and take measures to find out if the internet service provider is able to provide the identity of the alleged infringer.

In the above-mentioned case MAO:311/18, the Finnish Market Court issued a blocking order against Rarbg- ja Yify-torrent services but rejected the application regarding the proxy sites relating to those sites, based on the lack of effort expended to ascertain the identity of the persons providing the proxy sites. The Market Court concluded that, even when access to the main file-sharing service is blocked, proxy sites do not automatically get blocked, and that each proxy site needs to be assessed in the same way as the main file-sharing service. This means, among other things, that the applicant needs to show that it has tried to ascertain the identity of the alleged infringer for each proxy site.<sup>734</sup>

#### 6.10.4.6. Measures against end-users ordered by the courts

Measures against end-users have not been applied by courts in Finland.

#### 6.10.4.7. Compensation criteria adopted by the courts

With regard to compensation, damages are compensatory under Finnish law.

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<sup>732</sup> Helsinki Court of Appeal's decisions of 15 June 2012, decision number 1687; 8 February 2013, decision number 383; and 12 February 2013, decision number 411 (no link is available).

<sup>733</sup> See MAO:311/18, <https://www.markkinaoikeus.fi/fi/index/paatokset/teollisjatekijanoikeudellisetasiat/teollisjatekijanoikeudellisetasiat/1529045059067.html>.

<sup>734</sup> See MAO:311/18, <https://www.markkinaoikeus.fi/fi/index/paatokset/teollisjatekijanoikeudellisetasiat/teollisjatekijanoikeudellisetasiat/1529045059067.html>.





#### 6.10.4.8. Criminal sanctions ordered by the courts

There are no cases concerning the application of criminal sanctions ordered by courts to online piracy of audiovisual sports content.

### 6.10.5. Reports and studies

The Copyright Information and Anti-Piracy Centre – which represents a variety of rightsholders – has published several studies related to online piracy of protected content, such as “Nordic Piracy Spring 2019”<sup>735</sup> and “*Tekijänoikeusbarometri 2020*.”<sup>736</sup> However, these reports do not consider any specific issue of illegal online transmission of sports events.

There are no studies describing the legal offer of online sports content in Finland.

With regard to awareness campaigns, in the early 2000s, the focus of said campaigns was on piracy. Nonetheless, in recent years campaigns have focused more on the positive aspects of copyright and what people can achieve by creating intellectual property.

An example of informational services is the one available at the following URL <https://kopiraittila.fi/>, an interactive service providing educational materials about copyright. Another service is [laillisetpalvelut.fi](http://laillisetpalvelut.fi), listing legal online entertainment services.

There are no associations of broadcasters or rightsholders that actively work to address the issue of online piracy of audiovisual sports content. However, the Copyright Information and Antipiracy Centre addresses the piracy of audiovisual content, including also sports content.

### 6.10.6. Data compilation

This country report is based on data compiled by Olli Honkkila, a PhD candidate at the University of Helsinki, focusing on issues affecting the openness of the internet.

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<sup>735</sup> <https://ttvk.fi/assets/uploads/2019/11/mediavision-2019-finland.pdf>.

<sup>736</sup> <https://ttvk.fi/tekijänoikeusbarometri-2020-tekijänoikeudet-nahdaan-yha-luontevampana-osana-digitaalista-toimintaymparistoa>.



## 6.10.7. Annex

**Table 71. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive (98/84/EC)</b>	The Information Society Code (917/2014) Criminal Code (39/1889)
<b>Article 5 Directive 98/84/EC – Infringing activities</b>	Section 269(2) of the Information Society Code – decoding system violations Chapter 38 section 8(b) of the Criminal Code (39/1889) – offence involving a system for accessing protected services
<b>InfoSoc Directive (2001/29/EC)</b>	Copyright Act and Law 14.10.2005/822 amending the Criminal Code
<b>Article 6 ISD – Obligations as to technological measures</b>	Sections 50a and 50b of Chapter 5a
<b>Article 8 paragraphs 1 and 2 – Sanctions and remedies</b>	N/A
<b>Article 8 paragraph 3 – Sanctions and remedies</b>	Sections 60a-d and 60e of the Copyright Act
<b>IPRED (2004/48/EC)</b>	<i>Laki todistelun turvaamisesta teollis- ja tekijänoikeudellisissa riita-asioissa annetun lain muuttamisesta (678/2006);</i> <i>Laki tekijänoikeuslain muuttamisesta (679/2006), (Amendment to Copyright Act)</i>
<b>Article 6 IPRED – Evidence and Article 7 IPRED – Measures for preserving evidence</b>	N/A
<b>Article 8 IPRED – Right of information</b>	Section 7a of the Act to Safeguard Evidence in Civil Actions Concerning Intellectual Property Rights (344/2000)
<b>Article 9 IPRED – Provisional and precautionary measures</b>	Chapter 7 section 3 of the Code of Judicial Procedure
<b>Article 10 IPRED – Corrective measures</b>	N/A
<b>Article 11 IPRED – Injunctions</b>	Section 56g of the Copyright Act
<b>Article 12 IPRED – Alternative measures</b>	N/A
<b>Article 13 IPRED – Damages</b>	N/A
<b>E-Commerce Directive (2000/31/EC)</b>	The Information Society Code
<b>Article 12-15 ECD – Liability of intermediary service providers</b>	Sections 182 – 183 – 184
<b>Article 17 ECD – Out-of-court dispute settlement</b>	N/A



EU directives	National law
Art 20 ECD – Sanctions	N/A
DSM Directive (EU 2019/790)	Not transposed (as at October 2021)



## 6.11.FR – France – National legal summary<sup>737</sup>

### 6.11.1. General legal framework

#### 6.11.1.1. National legislation on copyright<sup>738</sup>

In France, the Intellectual Property Code (*Code de la propriété intellectuelle – CPI*)<sup>739</sup> regulates the scope and the enforcement of copyright (or, more precisely, intellectual property) and related rights.

The infringement of copyright is defined under Article L.122-4 of the CPI, as follows:

*Any full or partial representation or reproduction made without the consent of the author or of his rights holders or successors is illegal. The translation, adaptation or transformation, the arrangement or reproduction via any art or process is also illegal.*

In France, copyright infringement can be considered both as a civil law violation and a criminal offence. It is governed by Articles L. 331-1 to L. 311 1-4 et seq. (civil law violation) and by Article L. 335-2 et seq. (criminal offence) of the CPI.

French law does not differentiate between crimes depending on whether or not the offender acted for profit. However, depending on the circumstances and facts of the specific infringement, when the offender has acted for profit the courts may order more severe sanctions and fines and the seizure of the illegal financial proceeds as part of the sanction against the infringer.

#### 6.11.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

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<sup>737</sup> It was not possible to receive feedback on the country report concerning France during the checking round with the national competent institutions.

<sup>738</sup> The information contained in this country report is based on data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>739</sup> <https://www.legifrance.gouv.fr/codes/id/LEGISCTA000006161633/2021-01-18/>

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>740</sup> has not been fully transposed to date. As of September 2021, Articles 15 and 17 to 23 have been transposed.<sup>741</sup>

**Table 72. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	<p>Law No. 2019-775 of 24 July 2019 on the creation of a related right for the benefit of press agencies and press publishers</p> <p>Law No. 2020-1508 of 3 December 2020 on adaptive provisions to EU law in the economic and financial area</p> <p>Ordinance No. 2021-580 of 12 May 2021 transposing the 6th paragraph of Article 2 and Articles 17 to 23 of 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 and amending Directives 96/9/EC and 2001/29/EC</p>
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	<p>Law No. 2007-1544 of 29 October 2007 regarding the fight against intellectual property infringement (<i>Loi n° 2007-1544 du 29 octobre 2007 de lutte contre la contrefaçon</i>);<sup>742</sup> Decree No. 2008-624 of 27 June 2008.<sup>743</sup></p>
<b>InfoSoc Directive</b>	<p>Law No. 2006-961 of 1 August 2006 on copyright and related rights in the information society (<i>Loi n° 2006-961 du 1er août 2006 relative au droit d'auteur et aux droits voisins dans la société de l'information</i>);<sup>744</sup></p> <p>Intellectual Property Code (CPI);</p> <p>Law No. 86-1067 of 30 September 1986 as amended regarding freedom of</p>

<sup>740</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

<sup>741</sup> See Law No. 775 of 24 July 2019 on the creation of a related right for the benefit of press agencies and press publishers (*Loi n° 2019-775 du 24 juillet 2019 tendant à créer un droit voisin au profit des agences de presse et des éditeurs de presse*), <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000038821358/>; Law No. 1508 of 3 December 2020 regarding several adaptive provisions to EU law in the economic and financial areas (*Loi n° 2020-1508 du 3 décembre 2020 portant diverses dispositions d'adaptation au droit de l'Union européenne en matière économique et financière*), <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042607095/>; and Ordinance No. 2021-580 of 12 May 2021 transposing the 6th paragraph of Article 2 and Articles 17 to 23 of 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 and amending Directives 96/9/EC and 2001/29/EC (*Ordonnance n° 2021-580 du 12 mai 2021 portant transposition du 6 de l'article 2 et des articles 17 à 23 de la directive 2019/790 du Parlement européen et du Conseil du 17 avril 2019 sur le droit d'auteur et les droits voisins dans le marché unique numérique et modifiant les directives 96/9/CE et 2001/29/CE*).

<sup>742</sup> <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000279082/>

<sup>743</sup> Decree No. 2008-624 of 27 June 2008 implementing Law No. 2007-1544 of 29 October 2007 on combatting counterfeiting and amending the Intellectual Property Code (*Décret n° 2008-624 du 27 juin 2008 pris pour l'application de la loi n° 2007-1544 du 29 octobre 2007 de lutte contre la contrefaçon et portant modification du code de la propriété intellectuelle*),

<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000019080002/>

<sup>744</sup> <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000266350/>



EU directive	National law
	communication ( <i>Loi n° 86-1067 du 30 septembre 1986 modifiée relative à la liberté de la communication</i> ).
<b>E-Commerce Directive</b>	Law No. 2004-575 of 21 June 2004 for confidence in the digital economy ( <i>Loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique – LCEN</i> ). <sup>745</sup>
<b>Conditional Access Directive</b>	French Criminal Code <sup>746</sup> ( <i>Code pénal</i> )

Source: French response to European Audiovisual Observatory standardised survey

## 6.11.2. National rules applicable to audiovisual sports content

### 6.11.2.1. Legal definitions of “broadcaster” and “sports event organiser”

In French law, the definition of “broadcaster” is provided by Law No. 86-1067 of 30 September 1986 regarding freedom of communication (*Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication, “Loi Léotard”*).<sup>747</sup> Article 2-1 defines a broadcaster, referred to as a “service distributor” (*distributeur de service*), as:

*any person establishing a contractual relationship with service publishers to propose an offer for audiovisual communication services made available to the public through an electronic communication network as defined in Article L.32 paragraph 2 of the Code of postal and electronic communications services. A service distributor is also any person who proposes said offer by establishing a contractual relationship with other distributors.*

The Sports Code<sup>748</sup> (*Code du Sport*) includes a series of provisions about the organisation of sports events (Article L.331-1 et seq.) which mention sports events organisers, but the code does not provide a specific definition of a “sports events organiser”. The closest definition appears in Article L.331-5 of the Sports Code, which provides that: “Any natural person or legal entity, other than the sports federations, organising an event open to federation members of an activity subject to a delegation of power pursuant to Article L.131-14 (...) must be granted an authorisation from the relevant federation.”

<sup>745</sup> Law No. 2004-575 of 21 June 2004 for confidence in the digital economy (*Loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique – LCEN*),

<https://www.legifrance.gouv.fr/loda/id/LEGIARTI000006421540/2021-05-07/?isSuggest=true>

<sup>746</sup> French Criminal Code (*Code pénal*), <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006070719/>.

<sup>747</sup> <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006068930/2021-01-26/>.

<sup>748</sup> [https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006071318/2021-04-06/](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006071318/2021-04-06/).



#### 6.11.2.2. Legal protection related to sports events

Sports events and sports competitions are protected under French law. The sports federations and event organisers (having received a delegation of power as mentioned in Article L.331-5) own the exploitation rights for the sports events or competitions that they organise. Exploitation rights are covered under Articles L. 333-1 to L.333-3 of the Sports Code. Exploitation rights include the right to consent to bets on the sports events (Article L. 333-1-1). In particular, all or part of the exploitation rights in sports events and competitions organised in each sports season by the professional leagues may be assigned at no cost by the sports federations to sports societies provided that such societies participate in these events and competitions (Article L. 333-1).<sup>749</sup>

Audiovisual exploitation rights assigned to sports societies are commercialised by the professional league, under conditions that are defined by decree. The exploitation rights of the sports federations only cover the sports events and do not include information and images not directly and exclusively related to sports events organised by a federation.

Furthermore, broadcasting rules are covered under Articles L.333-6 to L.333-9 of the Sports Code. Pursuant to Article L.333-7 of the Sports Code, the assignment of the exploitation rights for a sports event or competition to an electronic communications service to the public (*service de communication au public par voie électronique*) cannot prevent information from reaching the public via other public electronic communications services. Other electronic communications services to the public may broadcast brief clips taken at no cost from the images produced by the assignee services and selected freely by the third-party service. Said clips can be broadcast at no cost during news programmes but must clearly identify the assignee electronic communications service.

The assignment of exploitation rights for a sports event or competition to an electronic communications service to the public does not prevent radios from capturing and broadcasting oral commentaries of the event, including live. Also, the assignment of the exploitation rights for a sports event or competition to an electronic communications service to the public does not prevent the broadcast of all or part of such event or competition by another electronic communications service to the public if the assignee service does not broadcast significant parts of the event or competition live (Article L.333-8).

Rights owners (i.e. sports federations), sports event organisers and the assignees of the federations' exploitation rights are entitled to take legal action in the event of infringement of copyright or related rights related to the broadcasting or online transmission of a sports event content.

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<sup>749</sup> [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006071318/LEGISCTA000006167058/#LEGISCTA000006167058](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006071318/LEGISCTA000006167058/#LEGISCTA000006167058).

### 6.11.2.3. Other specific rules applicable to sports events

No other specific rules apply in relation to the use of sports content on social media.

**Table 73. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
Broadcaster	Yes	Related rights
Sports event organiser	No	Exploitation rights

Source: French response to European Audiovisual Observatory standardised survey

## 6.11.3. Remedies and sanctions applicable in the event of infringement

### 6.11.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

Although not specifically targeting online piracy of audiovisual sports content, Article L332-1 of the CPI provides that the rightsholders may request the competent court to order bailiffs to either produce a detailed description or seize copies of the works that are allegedly infringing and all related documentation. The court may order a detailed description of the actual seizure of the equipment used to produce and distribute the works illegally. Seizure may include the financial proceeds from the illegal activity and the suspension of the current broadcast.

More specifically concerning online infringement, such as illegal peer-to-peer (P2P) activities and illegal streaming, Chapter VI of the CPI (Articles L.336-1 to L.336-4) includes measures to prevent illegally downloading and making available works and subject matter protected by copyright and related rights. In particular, according to Article L. 336-2 CPI, in the case of infringement of a copyright or a related right due to the content of an online communications service to the public, the judicial court, ruling under an accelerated procedure on the merits (*procédure de référé*) may, upon request from the rightsholders, their beneficiaries, the collective management organisations or the professional defence organisations, order any measures likely to prevent or suspend such an infringement against any person who may be able to prevent it.<sup>750</sup>

<sup>750</sup> See further details on injunctions in section 6.11.3.5. of this country report).





Concerning the protection of technological measures and rights management information (Article 6–7 of the InfoSoc Directive), Articles 323-1 to 323-8 of the French Criminal Code<sup>751</sup> regulate breaches of automatic data processing systems (such as breaches of conditional access services). In particular, Article 323-3-1 provides as follows:

*the fact of importing, possessing, offering, transferring or making available, without a legitimate motive, in particular for research or digital security purposes, any equipment, instrument, computer programme or data designed or specially adapted to commit one or several of the offences provided for in Articles 323-1 to 323-3 shall be punishable by the penalties laid down for the offence itself or for the offence carrying the most severe penalty.*

Special sanctions and remedies are provided in the law for infringements related to these automatic data processing systems. Thus, according to Article 323-1, paragraphs 1 and 2 of the CPI, the fact of accessing or remaining fraudulently in all or part of an automatic data processing system is punished with two years in prison and a fine of EUR 60 000. When it results in either the deletion or the modification of data contained in the system, or the alteration of the operation of said system, the conviction shall be three years in prison and a fine of EUR 100 000. Besides, Article 323-2 paragraph 1 provides for five years' imprisonment and a fine of EUR 150 000 in the case of hindering or distorting the operation of an automatic data processing system. Article 323-3 introduces a term of five years' imprisonment and a fine of EUR 150 000 when there is fraudulent access to data in order to extract, possess, transmit, delete or modify the data.

On the other hand, sanctions and remedies are provided with regards to the infringement of IP rights related to the broadcasting of protected content in Articles 79-1 et seq. of Law No. 86-1067 of 30 September 1986 regarding freedom of communication, as amended.<sup>752</sup> In particular, Article 79-1 specifically provides that:

*the manufacturing, importation for sale or rental, offer for sale, possession for sale, the sale or the installation of any equipment, device or instrument designed, in whole or in part to fraudulently receive tele-broadcast programmes, when such programmes are reserved for a specific public that has access through payment of a fee to the operator of the service, are punished with two years in prison and a maximum fine of 300 000 €.*

Article 79-2 provides as follows :

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<sup>751</sup>[https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006070719/LEGISCTA000006149839?tab\\_selction=all&searchField=ALL&query=code+p%C3%A9nal&page=1&init=true&anchor=LEGISCTA000006149839#LEGISCTA000006149839](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006149839?tab_selction=all&searchField=ALL&query=code+p%C3%A9nal&page=1&init=true&anchor=LEGISCTA000006149839#LEGISCTA000006149839)

<sup>752</sup> (Loi n° 86-1067 du 30 septembre 1986 modifiée relative à la liberté de la communication)  
<https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006068930/2021-01-19/>



*ordering, designing, organising or broadcasting an advertisement which, directly or indirectly, promotes an equipment, device or instrument mentioned in article 79-1 is punished with one year in prison and a fine of 15 000 €.*

Article 79-3 provides that :

*the fraudulent organisation of the rights of the service operator of the reception by third parties of programmes mentioned in article 79-1 is punished with six months in prison and a fine of 7 500 €.*

Article 79-4 states that “the purchase or possession for the purpose of being used of any equipment, device or instrument mentioned in Article 79-1 is punished with a fine of 7 500 €.”

Finally, Article 79-5 provides that in the case of a conviction for one of the offences defined in Articles 79-1 to 79-4, the court may confiscate equipment, devices, instruments and advertising documents.

#### 6.11.3.2. National bodies with competences on copyright enforcement

In France, there is no authority other than the courts which is globally competent over intellectual property infringement. There is an administrative body in charge of fighting online intellectual property infringement called the High Authority for the Distribution of Works and Protection of Rights on the Internet (*Haute autorité pour la diffusion des oeuvres et la protection des droits sur internet*, HADOPI). The missions and areas of competence of HADOPI are described in Articles L.331-12 to L.331-37 of the CPI. Its missions are threefold:

- to promote the development of the legal offer and observation of the legal and illegal online use of the works protected by intellectual property or related rights;
- to protect said works from online copyright infringement; and
- to regulate and monitor the area of technical protection and identification measures of the works protected by intellectual property or related rights.

The HADOPI may recommend legal or regulatory modifications and may be consulted by the government on any bill or draft decree regarding intellectual property (Article L.331-13 CPI).

The provisions regulating the HADOPI do not specifically address sports content. The HADOPI is primarily known to the public for its fight against illegal P2P usage and through a “gradual response” (*riposte graduée*) process, governed by Articles L.336-1 et seq. and R.335-5 of the CPI. The focus is on educating users and raising their awareness by sending notices to internet service subscribers so that they ensure that their connection is not used for illegal purposes by themselves or by third parties. The HADOPI can be referred to by rightsholders or their beneficiaries (Article L.331-33 CPI). The

maximum offence is a fine of EUR 1 500 for natural persons and EUR 7 500 for legal entities infringing online intellectual property rights.

The law originally included the possibility for the court to order suspension of access to the internet for the subscriber but this provision was repealed by decree on 8 July 2013. Although hundreds of thousands of notices have been sent to internet subscribers since the law was enacted in 2009, very few court decisions have been reached and the amounts have always been minimal (a few hundred euros).

A recently-adopted bill regarding the regulation and protection of access to cultural works in the digital age, which was promulgated on 25 October 2021,<sup>753</sup> establishes the creation of a new audiovisual regulator, the Audiovisual and Digital Communication Regulatory Authority (*Autorité de régulation de la communication audiovisuelle et numérique*, ARCOM)<sup>754</sup> on 1 January 2022. The creation of ARCOM, which will merge the existing HADOPI and CSA (*Conseil supérieur de l'audiovisuel*), aims to create an integrated regulator with extended competences, notably on the creative chain, from the setting of obligations to the protection of copyright and related rights and the fight against piracy. ARCOM will also be given new areas of competence in relation to digital content piracy. In particular, ARCOM will be given competences to identify infringing websites and notify intermediaries, using data transmitted by the rightsholders, for the purposes of blocking access, and to request search engines, directories and other indexing services to de-index infringing websites.

#### 6.11.3.3. Codes of conduct and Memorandums of Understanding

Codes of conduct have been widely recommended by the institutions, regarding online activities as well. More particularly the former *Forum des droits sur l'internet* (Internet Rights Forum), an administrative institution, promoted and contributed to the development and implementation of several codes of conduct.

Codes of conduct, also known as “charters” (*chartes*) or “agreements” (*accords*), have been used increasingly in the IT and intellectual property industry. In France, two main documents may be considered as codes of conduct or Memorandums of Understanding that relate to the enforcement of intellectual property rights and the fight against online piracy. These documents were adopted by public and/or private entities.

A first anti-piracy charter was signed on 28 July 2004 between the major Internet Service Providers (ISPs) in France and members of the cultural industry (distributors, collective management organisations, producers), under the direction of the Minister for Economy (former President Mr. Nicolas Sarkozy). This document, entitled “Charter of

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<sup>753</sup>Law No. 2021-1382 of 25 October 2021 on the regulation and protection of access to cultural works in the digital age (*LOI n° 2021-1382 du 25 octobre 2021 relative à la régulation et à la protection de l'accès aux œuvres culturelles à l'ère numérique*), <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000043339178/>.

<sup>754</sup> *Autorité de régulation de la communication audiovisuelle et numérique*



commitment to the fight against piracy and for the development of legal online music offers” (*Charte d’engagement pour la lutte contre la piraterie et pour le développement des offres légales de musique en ligne*) was heavily criticised by certain collective management organisations and consumer associations emphasising that not all P2P activities were illegal (e.g. the right to make a private copy of a protected work – *droit à la copie privée*).<sup>755</sup>

In September 2017, an agreement to combat audiovisual piracy (*Accord de lutte contre la piraterie audiovisuelle*) was signed between Google and ALPA (*Association de lutte contre la piraterie audiovisuelle* – Association Against Audiovisual Piracy) under the auspices of the French National Cinema Centre (*Centre national du cinéma et de l’image animée* – CNC). The purpose of this agreement, signed at the Ministry of Culture in Paris, is to help rightsholders fight audiovisual piracy on the internet, and more specifically illegal videos posted on YouTube, ensuring Google’s cooperation to improve the effectiveness of the notice and take-down process.<sup>756</sup>

The agreement provided that Google would make its Content ID detection tools available to the association in order to achieve faster blocking of content posted online illegally. Another part of the agreement concerned Search, a search engine provided by Google to organise the downgrading of the indexation of illegal content via the Trusted Copyright Removal Program (rather than the de-indexation of illegal content). Furthermore, in this agreement, the CNC entrusted ALPA with a new mission:

*which consists in using, on behalf of its members who wish to do so, tools for monitoring and protecting works on the internet in order to fight more effectively against the presence of infringing content on online platforms.*

#### 6.11.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

Articles 6-I-3 and 6-I-5 of the Law for trust in the digital economy (*Loi pour la confiance dans l’économie numérique* – LCEN) provide for a notice and take-down procedure that can be used by rightsholders each time they find that their online content is being used (i.e. posted, broadcast) illegally.

According to these provisions, hosting service providers are not liable (under civil or criminal liability) for third-party content hosted on their servers or platforms, provided they have no actual knowledge that such content is blatantly illegal. If they become aware of illegal content being hosted on their servers/platforms through a notification received by a rightsholder, a beneficiary, a user or through self-monitoring, then they must act promptly to remove the content or block access to the content.

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<sup>755</sup> No copy of the charter has been made available on the internet.

<sup>756</sup> <https://www.nextinpact.com/article/27249/105211-piratage-ce-que-dit-laccord-signé-entre-google-et-lalpa-sous-legide-cnc>; [https://www.lepoint.fr/high-tech-internet/lutte-contre-le-piratage-accord-inédit-entre-google-et-l-audiovisuel-francais-19-09-2017-2158297\\_47.php#](https://www.lepoint.fr/high-tech-internet/lutte-contre-le-piratage-accord-inédit-entre-google-et-l-audiovisuel-francais-19-09-2017-2158297_47.php#)

The service provider is deemed to have knowledge of illegal content when the following information is provided by the notifying party: (i) full identification of the person (natural person or legal entity) reporting the illegal content; (ii) a description of the illegal content; (iii) its precise location (e.g. URL, website, etc.); (iv) if relevant, the electronic address(es) where the content can be accessed; v) the legal reason why the illegal content should be removed or blocked; and (vi) a copy of the message sent to the author or to the publisher of the illegal information or activities requesting their suspension, removal or modification, or a justification that the publisher could not be contacted.

#### 6.11.3.5. Removal and blocking orders

There are currently no injunction procedures specific to audiovisual sports content in France (see below on the antipiracy bill). Injunction procedures for piracy of online content are governed by Article L.336-2 of the CPI, as follows:

*in case of intellectual property infringement or related rights infringement due to the content of an online public communications service, the judicial court, ruling under an emergency procedure on the merits may, upon request from the rights owners, their beneficiaries or the collective management organisations (...) order any measures to prevent or suspend such infringement against any person who may be able to prevent it. The request may also be made by the National Centre for Cinema.*

Based on this provision (and Article 6-1 of the LCEN), the court, upon request by the rightsholders or their beneficiaries, can order the ISPs to block access to the illegal website and URLs (P2P, streaming, domain names) when it is not possible to obtain the closure of the website through a criminal procedure against the operators of the illegal websites. The blocking measures are civil proceedings introduced by the rightsholders against the ISPs and search engines (not against the infringers). The illegal websites still exist but can no longer be accessed through ISPs or search engines.

Based on case law, dynamic injunctions are currently only applicable against search engines for de-indexing purposes, for a duration of 12 months.<sup>757</sup> Regarding the ISPs, no dynamic injunctions can be imposed on them at the moment. It is, however, possible to introduce emergency procedures (*procédures en référé*) for updating purposes against mirror websites. (Articles 484 to 492 of the Code of Civil Procedure – *Code de procédure civile*).

It is also worth mentioning that according to the above-mentioned recently-adopted bill regarding the regulation and protection of access to cultural works in the

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<sup>757</sup> TGI Paris, 15 Décembre 2017, Syndicat de l'édition vidéo numérique (SEVN), Association des producteurs indépendants (API) vs SFR, Bouygues Telecom, Google Inc., Orange et al.



digital age, ARCOM will be given competences to identify infringing websites and notify intermediaries, using data transmitted by the rightsholders, for the purposes of blocking access, and to request search engines, directories and other indexing services to de-index infringing websites. In addition, ARCOM will have the power to extend courts' dynamic blocking orders to related domain names and mirror sites. The new law foresees agreements between rightsholders and intermediaries to guarantee the enforcement of court decisions and the establishment of a "blacklist" of infringing websites. In the case of non-compliance, intermediaries may be exposed to further legal action.

Furthermore, a bill on democratising sport in France,<sup>758</sup> was presented by the government through accelerated procedure and adopted at first reading by the National Assembly on 19 March 2021. It is currently under examination by the Senate (as of October 2021).<sup>759</sup> If promulgated into law, the bill would amend the Sports Code (*Code du sport*) and introduce a new specific provision (proposed new Article L. 333-10) foreseeing a live blocking/forward-looking injunction (in the current draft) to combat illegal live streaming of sporting events. In the case of serious and repeated infringements of the rights attached to a sports event or competition, caused by the content of an online service whose main objective or one of the main objectives is the unauthorised broadcasting of sports competitions or events, and in order to prevent or remedy a new, serious and irremediable infringement of these same rights, the rightsholder may refer the matter to the president of the court. The court would, in the accelerated procedure or in summary proceedings, decide on the merits ordering all proportionate measures that are likely to prevent or put an end to this infringement against any person likely to contribute to the infringement. Such an anticipatory injunction could be introduced by a professional sports league or an audiovisual communications company. The president of the court may order, if necessary under penalty, all proportionate measures, such as blocking, withdrawal or dereferencing measures, to prevent access from French territory to any online service, identified or not identified at the date of the said order, which illegally broadcasts the competition or sports event or whose main objective or one of the main objectives is the unauthorised broadcasting of the competition or sports event. This injunction would be limited in time – to every day appearing in the official calendar of the competition or sports event and within the limit of a period of 12 months.<sup>760</sup>

#### 6.11.3.6. Measures against end-users

Blocking injunctions are issued against ISPs and search engines, but not against end-users. There is no regulatory process to suspend or block internet access in France. The

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<sup>758</sup> Follow-up of the legislative procedure by the French Senate, <https://www.senat.fr/dossier-legislatif/ppl20-465.html>

<sup>759</sup> LFP, "Adoption du projet de loi « protection des œuvres à l'ère numérique » : une avancée majeure dans la lutte contre le piratage du sport", 21 May 2021, <https://www.lfp.fr/Articles/COMMUNIQUE%3%89S/2021/05/20/apps-adoption-du-projet-de-loi-protection-des-oeuvres-a-l-ere-numerique>

<sup>760</sup> *Proposition de loi visant à démocratiser le sport en France*, <http://www.senat.fr/leg/ppl20-465.html>



original bill on “Creation and Internet” dating back to June 2008 included provisions on gradual sanctions up to the suspension of internet services; however, they have been declared unconstitutional. More exactly, the law provided that the user would receive two written warnings and in the case of continuing illegal use of intellectual content, the ultimate sanction would be the suspension of the internet subscription for a period of three months to one year, with a prohibition against obtaining a new subscription from a separate ISP during the suspension period. In a decision reached on 10 June 2009, the Constitutional Court (*Conseil constitutionnel*) rejected this measure, ruling that freedom of expression includes free access to online public communications services. Any limitation to fundamental freedoms must be made through the judicial courts.<sup>761</sup> In addition, Decree No. 2010-965 dated 25 June 2010 defining the notion of manifest negligence (*négligence manifeste*) included the possibility to suspend access to the internet for a maximum period of one month. This provision was repealed through Decree No. 2013-596 dated 8 July 2013.

As to the collection of personal data by private entities to identify end-users, pursuant to Article L.331-29 of the CPI, the HADOPI had to set up a specific data process in order to process the data of individuals using digital communications services illegally to implement the “gradual response process” (which is focused on illegal P2P and is directed at both people uploading illegal content and people downloading/viewing illegal content – but very seldom followed by legal proceedings).

A first decree entitled “System for the management of measures to protect intellectual works on the internet” (*Système de gestion des mesures pour la protection des oeuvres sur internet*) was published on 5 March 2010 (Decree No. 2010-236 of 5 March 2010),<sup>762</sup> amended on 11 March 2011 by Decree No. 2011-264.<sup>763</sup> A second decree about the procedure before the HADOPI Commission for the protection of rights was published on 26 July 2010 (Decree No. 2010-872 of 26 July 2010), describing the interconnection between the automatic personal data process used by professional organisations, collective management organisations, and the CNC, on the one hand, and the data process used by access service providers on the other hand. The decree describes the conditions for the interconnection between the different data processes and the type of personal data that may be collected.

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<sup>761</sup> Decision n° 2009-580 DC of 10 June 2009,

<https://www.conseil-constitutionnel.fr/decision/2009/2009580DC.htm>

<sup>762</sup> Décret n° 2010-236 du 5 mars 2010 relatif au traitement automatisé de données à caractère personnel autorisé par l'article L. 331-29 du code de la propriété intellectuelle dénommé “Système de gestion des mesures pour la protection des œuvres sur internet”.

<sup>763</sup> Décret no. 2011-264 du 11 mars 2011 modifiant le décret no. 2010-236 du 5 mars 2010 relatif au traitement automatisé de données à caractère personnel autorisé par l'article L. 331-29 du code de la propriété intellectuelle dénommé “Système de gestion des mesures pour la protection des œuvres sur internet”.

### 6.11.3.7. Criminal sanctions

In the event of infringement of his/her rights, the rightsholder may bring an action for infringement before either the civil or the administrative courts in order to obtain compensation or before the criminal courts to obtain criminal sanctions. Infringement of copyright constitutes an offence of counterfeiting (*délit de contrefaçon*)<sup>764</sup> punishable by a fine of EUR 300 000 and three years' imprisonment (Article L.335-2 et seq. CPI). Additional penalties – closure of the establishment, confiscation of equipment, publication by posting the judicial decision online or publishing it in national newspapers – may also be pronounced.

There are currently no criminal procedures in the case of online piracy of audiovisual sports content. However, there are two types of criminal procedures that can be initiated to combat online piracy of audiovisual content:

- For illegal P2P activities, the HADOPI may apply a “gradual response” (riposte graduée) to the individuals or entities pursuant to Article L.331-25 of the CPI. This proceeding is primarily aimed at “educating” users. In the case of copyright infringement, it may however end up in criminal proceedings. When the HADOPI is notified of an illegal P2P activity by rightsholders or agents, a first recommendation to the subscriber of the internet contract can be sent by email. If another violation is committed within six months of the first recommendation, a second recommendation is sent by email and registered mail. If further violations are committed during the 12 months following the second recommendation, the HADOPI may send a notification informing the subscriber that he/she may be subject to criminal proceedings. The file may be forwarded to the prosecutor who may then decide to engage criminal proceedings against the subscriber of the internet contract.
- For illegal P2P activities and illegal streaming, the general criminal proceedings in intellectual property rights infringement (*délit de contrefaçon*) may be introduced by the prosecutor pursuant to Article L.335-1 et seq. of the CPI.

**Table 74. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	Yes, protection under the Sports Code
Specific rules on the use of sports content in social	No

<sup>764</sup> The CPI defines “counterfeiting” as (i) all acts of unauthorised use of the work, and incriminates under the offence of counterfeiting any reproduction, representation or distribution, by whatever means of a protected work in violation of the author’s rights (Article L.335-3 CPI); and (ii) the act of disseminating (in particular by sale) infringing goods, the export and import of “infringing” works (Article L.335.2 al.3).



Specific features on sports	Description
media	
Specific competent bodies (other than judicial bodies)	No (High authority for the distribution of works and protection of rights on the internet “HADOPI” competent on education and awareness). Specific competent body (ARCOM) set up by law
Entitlement to take legal action	Yes, rights owners (i.e. sports federations), sports event organisers and the assignees of the federations’ exploitation rights are entitled to take legal action in case of infringement of broadcasting or online transmission of a sports event.
Codes of conduct	Yes
Specific proceedings	Yes
Specific remedies	No

Source: French response to European Audiovisual Observatory standardised survey

**Table 75. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	No
Removal and blocking injunctions	Yes
Dynamic and/or live blocking injunctions	Yes, according to case law (only applicable against search engines for de-indexing purposes, but not on ISPs) Emergency procedures available for updating purposes against mirror websites
De-indexing injunctions	Yes
Damages and orders to cease and desist	Yes
Administrative offence and remedies	No
Notice and take-down procedures	Yes

Source: French response to European Audiovisual Observatory standardised survey



## 6.11.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions, in relation to online infringement of audiovisual sports content.

**Table 76. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
<b>Communication to the public</b>	N/A	N/A
<b>Hosting providers' knowledge and awareness of illegal activity</b>	Sanction against a platform for not blocking illegal content. Notification to the service provider in order to guarantee knowledge of the illicit content.	<i>Tribunal de Grande Instance de Paris 3ème chambre, 4ème section, 13 septembre 2012, TF1 et autres / Dailymotion</i> <i>Tribunal de Grande instance de Paris 3ème chambre, 4ème section, 28 avril 2011, SPPF / YouTube, Google France, Google Ireland</i> <i>Tribunal de Grande Instance de Paris, Ordonnance de référé 20 octobre 2010, Alexandre B. / JFG Networks</i>
<b>Notice and take-downs</b>	N/A	N/A
<b>Measures against end-users</b>	Measures against end-users cannot be ordered, because the right to freedom of expression is considered prevalent.	Constitutional Court – Decision No. 2009-580 DC of 10 June 2009
<b>Criminal sanctions</b>	Violation of Article L.333-1 of the Sports Code – not given authorisation to exercise exploitation rights. Illicit sale of match tickets by a platform.	<i>Cour d'Appel de Paris Pôle 5, 1ère chambre, 14 octobre 2009, Unibet International c. Fédération française de tennis</i> <i>Tribunal de Grande Instance de Paris, 5ème chambre, 1ère section, 20 mai 2014, Fédération française de football c. Viagogo Inc.</i>

Source: French response to European Audiovisual Observatory standardised survey

### 6.11.4.1. Communication to the public

No specific case law was reported in France related to the notions of communication to the public and copyright infringement of audiovisual sports content.



#### 6.11.4.2. Online infringement of audiovisual sports content

In France, there is case law on the liability of hosting service providers and of ISPs regarding the blocking of illegal content. Most case law is related to illegal P2P or streaming services of music and/or films. Two cases were reported that relate more specifically to the sports sector.

A court decision dated 14 October 2009 taken by the Paris Court of Appeal<sup>765</sup> between the French Tennis Federation (*Fédération française de tennis* – FFT) and Unibet, a betting platform located in Malta. Unibet was not authorised to operate in France and had not been assigned the right to organise online bets by the FFT. The court decided that Unibet: (i) had violated Article L.333-1 of the Sports Code (exploitation rights belonging to the sports federations) by organising an online betting activity that had not been authorised by the FFT; (ii) had violated trademark law (the FFT owns the Roland Garros tournament trademark) and could not benefit from Article L.713-6 of the CPI allowing the use of a trademark by a third party provided that its reference is necessary to inform the public about a product or service. The court also sanctioned Unibet for unfair competition (*parasitisme*).

The second court decision was taken by the Paris Civil Tribunal (*Tribunal de grande instance*) on 20 May 2014<sup>766</sup> in a case between the French Football Federation (*Fédération française de football* – FFF) and Viagogo, Inc. Football match tickets involving French teams were being resold on the Viagogo platform in violation of Article L.333-1 of the Sports Code. Viagogo had refused to remove the tickets from the platform despite several official notifications sent by the FFF.

In addition, a recent decision of the Paris Civil Court (*Tribunal Judiciaire*) is worth mentioning as regards the right to request identification data from hosting providers in relation to alleged copyright infringers.<sup>767</sup> In this case, beIN SPORTS' anti-piracy teams identified websites that were broadcasting exclusive sports content without authorisation, free of charge and on a daily basis, which is a service normally reserved for subscribers to beIN SPORTS' pay channels. To obtain data allowing the identification of the pirates in order to take action against them, beIN SPORTS has taken the following steps:

- Evidencing the illegal activities carried out on the websites, through several bailiff reports.
- Seeking the identity of the holders of the domain names of the illicit websites. The anti-piracy teams at beIN SPORTS were unable to obtain this information

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<sup>765</sup> *Cour d'appel de Paris Pôle 5, 1ère chambre, 14 octobre 2009, Unibet International c. Fédération française de tennis* <https://www.legalis.net/jurisprudences/cour-dappel-de-paris-pole-5-1ere-chambre-arret-du-14-octobre-2009/>

<sup>766</sup> *Tribunal de Grande Instance de Paris, 5ème chambre, 1ère section, 20 mai 2014, Fédération française de football c. Viagogo inc* <https://www.bertrand-sport-avocat.com/droitdu sport/droit-du-sport/jurisprudence/935-la-federation-francaise-de-football-gagne-une-bataille-contre-viagogo>

<sup>767</sup> the Scaleway case



because said domain name holders had chosen to remain anonymous, as revealed by the “Whois” records. These records indicated that the illegal websites’ IP addresses belonged to Cloudflare, a company incorporated in the United States and located in Texas.

- Contacting Cloudflare. This company provides so-called “reverse proxy” services. The reverse proxy acts as an IP address scrambler: Cloudflare provides an IP address to illegal websites that does not correspond to the server on which they are actually hosted. Each server has its own IP address. Therefore, Cloudflare is able to identify its customers’ hosts. Cloudflare sent beIN SPORTS back to Scaleway, which is identified as the host of the illegal websites based on the real IP address of the websites. However, Cloudflare did not provide beIN SPORTS with this real IP address.
- Filing a complaint against Scaleway as the hosting service provider for the illicit websites on the ground of Article 6-II of the LCEN and Article 145 of the French Civil Procedure Code in order to obtain the identification data relating to the litigious websites and the pirates operating them. In response, Scaleway objected that it was not, in its opinion, a hosting provider within the meaning of the LCEN because it was merely providing the leasing of a dedicated server to its customers who could, themselves, provide hosting services.

In a decision dated 26 March 2021, the President of the Paris Civil Court (*Tribunal Judiciaire*) ruled in favour of Scaleway and rejected beIN SPORTS’ request on the ground that Scaleway could not be considered to be the host of the disputed websites within the meaning of the Article 6-II of the LCEN, as Scaleway was merely leasing servers. Therefore, the judge considered that Scaleway was not subject to the obligation to store identification data of the users of its services (contrary to a real “host”) and could not be ordered to provide the information requested by beIN SPORTS. As a result, beIN SPORTS was unable to identify any of the individuals behind the five pirate websites that were the subject of its action.

#### 6.11.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

French courts rely on the notification (notice and take-down) conditions listed in Article 6-1-5 of the LCEN, i.e. that the hosting service provider receive the following information:

- the identification of the notifying party (natural person or legal entity)
- the description of the illegal content and its location
- the legal reasons for which the illegal content should be removed or blocked



- a copy of the mail sent to the author or publisher of the illegal information or activities requesting their suspension, removal or modification, or a justification that the publisher could not be contacted.

The hosting service provider can be held liable and/or in breach of contract if it removes or blocks content hosted by its services which is not blatantly illegal or if it does not receive the necessary elements to be able to remove or block the illegal content.

A few examples of cases regarding the notification requirements as per Article 6-I-5 of the LCEN are as follows:

- Dailymotion, a platform hosting third-party videos (TV series, films, news and TV programmes), was sanctioned for not blocking access to infringing content “promptly” (four days passed between the notification and the withdrawal).<sup>768</sup>
- SPPF, a collective society lost its lawsuit against YouTube, and was sanctioned because it refused to collaborate in order to allow the hosting platform to use its tool to prevent illegal content already notified from being published again.<sup>769</sup>
- A rights owner lost against a hosting service provider because the rightsowner had not notified the website making available the illegal content prior to suing the hosting provider, even though the contact details were accessible on its blog.<sup>770</sup>
- A hosting platform lost against collective management societies and rights owners for not promptly blocking access to infringing content (music videos and films). Although duly notified by the plaintiffs, the hosting platform considered that counterfeit content did not qualify as “blatantly infringing content”.<sup>771/772</sup>

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<sup>768</sup> Tribunal de Grande Instance de Paris 3ème chambre, 4ème section, 13 septembre 2012, TF1 et autres / Dailymotion: <https://www.legalis.net/jurisprudences/tribunal-de-grande-instance-de-paris-3eme-chambre-4eme-section-jugement-du-13-septembre-2012/>

<sup>769</sup> Tribunal de Grande instance de Paris 3ème chambre, 4ème section, 28 avril 2011, SPPF / Youtube, Google France, Google Ireland: <https://www.legalis.net/jurisprudences/tribunal-de-grande-instance-de-paris-3eme-chambre-4eme-section-jugement-du-28-avril-2011/>

<sup>770</sup> Tribunal de Grande Instance de Paris, Ordonnance de référé 20 octobre 2010, Alexandre B. / JFG Networks : <https://www.legalis.net/jurisprudences/tribunal-de-grande-instance-de-paris-ordonnance-de-refere-20-octobre-2010-2/>

<sup>771</sup> Tribunal judiciaire de Nancy, jugement correctionnel, 23 avril 2021, SACEM, SCPP, Warner et autres / DStorage et M. X.: <https://www.legalis.net/jurisprudences/tribunal-judiciaire-de-nancy-jugement-correctionnel-du-23-avril-2021/>

<sup>772</sup> According to Article 53 of the Code of Criminal Procedure: “A crime or misdemeanour that is currently being committed, or has just been committed, shall be deemed to be flagrant (or blatant). There is also a crime or offence in flagrante delicto when, in the immediate vicinity of the action, the suspected person is pursued by public clamour, or is found in possession of objects, or presents traces or clues, suggesting that he has participated in the crime or offence.



#### 6.11.4.4. Notice and take-down requirements

There are no cases on notice and take-down requirements. As mentioned above, the courts rely on the notification (notice and take-down) conditions listed in Article 6-1-5 of the LCEN.<sup>773</sup>

#### 6.11.4.5. Removal and blocking orders

The courts often apply measures to block illegal content against ISPs or to de-index content against search engines.

An example is the “Allostreaming case” in which the Paris Court of First Instance ordered five access service providers to block several Allostreaming websites and three search engines to de-index them. The decision did not, however, extend to related domain names or mirror sites, instead requesting the plaintiffs to file new emergency procedures if and when necessary.<sup>774</sup>

#### 6.11.4.6. Measures against end-users ordered by the courts

There are only a few cases in which the rightsholders or collective management societies sued the infringers, as for example:

- A case before the Nanterre Civil Court in which collective management societies sued six people who had illegally uploaded a movie on the internet before its official release in movie theatres. The defendants were condemned, at the criminal level, to a one-month suspended prison sentence (*sursis*) with a warning that a new conviction would lead to the enforcement of the sentence (without application to the criminal record). At the civil level, the defendants were sentenced to pay lump sums of EUR 15 000 in joint and several liability (*condemnation solidaire*).<sup>775</sup>
- In 2013, an IT student was sued by rightsholders and collective management societies for developing and providing a software program to circumvent the

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<sup>773</sup> See section 6.11.4.3. of this country report.

<sup>774</sup> *Tribunal de Grande Instance de Paris, Ordonnance de référé 28 novembre 2013, APC et autres / Auchan Telecom et autres*: <https://www.legalis.net/jurisprudences/tribunal-de-grande-instance-de-paris-ordonnance-de-refere-28-novembre-2013>

<sup>775</sup> *Tribunal de grande instance de Nanterre 15ème chambre Jugement du 12 février 2009, TF1, SEV et autres / Cédric P. et autres*: <https://www.legalis.net/jurisprudences/tribunal-de-grande-instance-de-nanterre-15eme-chambre-jugement-du-12-fevrier-2009/>



technical protection system used by a legal music platform and was sentenced to pay a lump sum of EUR 15 000.<sup>776</sup>

#### 6.11.4.7. Compensation criteria adopted by the courts

Regarding the compensation criteria adopted by the courts, French law does not recognise the notions of punitive or alternative damages. In civil law, the parties must prove the damages incurred based on civil liability (fault, damage, causality) and claim compensation on that basis, plus liquidated damages (*dommages et intérêts*).

In the *FFT v. Unibet* case, damages were awarded to the FFT based primarily on the violation of its exploitation rights and trademark infringement. The criteria used to assess the damages for violating the exploitation rights of the FFT were the “value” of the tournament (Roland Garros – the French Open), the reputation of the event, its worldwide exposure and the fact that Unibet continued to act illegally even after having been notified by the FFT.

In the *FFF v. Viagogo* case, the court ruled that the financial damage incurred by the FFF was nil as the tickets were being resold on Viagogo, i.e. they had been sold a first time by the FFF. The court however assessed the “moral” damage (i.e. damage to the image of the FFF) incurred by the FFF at EUR 50 000.

#### 6.11.4.8. Criminal sanctions ordered by the courts

On 8 June 2020, the Rennes specialised jurisdiction for organised crime and financial and/or complex offences (JIRS) rendered a judgement convicting five individuals charged, in particular, with unauthorised reproduction, communication and broadcasting to the public of sports television programmes to the prejudice of beIN Sports France, SFR and Canal +.<sup>777</sup> The individuals were prosecuted for having created, maintained and operated a “galaxy” of several dozen websites (amongst which the core website “beinsports-streaming.com”), broadcasting illegally streamed sports content 24/7 between 2014 and 2018.

The trial held on 5 March 2020 was the result of a thorough and complex investigation which allowed the individuals who had implemented this illegal activity to be identified, along with their modus operandi. It also allowed analysis of the financial streams which some of them had benefitted from, in particular through advertising on the illegal websites. The court sanctioned the defendants with sentences of up to several

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<sup>776</sup> Tribunal de grande instance de Nîmes Chambre correctionnelle, 28 juin 2013, *Blogmusik, Sacem et autres / Jérôme G.*: <https://www.legalis.net/jurisprudences/tribunal-de-grande-instance-de-nimes-chambre-correctionnel-jugement-du-28-juin-2013/>

<sup>777</sup> The beinsportstreaming.com case,



months' imprisonment, as well as with significant fines. Several properties and goods seized during the investigation, considered as profits of the criminal activity, were also confiscated. A further hearing will take place in autumn 2021 on the civil claims to be awarded to beIN Sports France, SFR and Canal +, civil parties who estimate at several million euros the damage suffered in this case.

A further decision was rendered by the same jurisdiction on 10 March 2021 on the civil claims: EUR 7 million damages were awarded to beIN, CANAL+ and RMC. An appeal has been filed only in respect of the damages awarded (the criminal convictions are final).

The other following two cases related to the application of criminal sanctions to online piracy of audiovisual sports content were identified:

- the Paris Court of Appeal decision dated 14 October 2009<sup>778</sup> between the FFT and Unibet, a betting platform located in Malta
- the Civil Tribunal of Paris (Tribunal de Grande Instance) decision dated 20 May 2014<sup>779</sup> between the French football federation and Viagogo Inc.

### 6.11.5. Reports and studies

The HADOPI has published several studies and reports on online piracy of IP protected content. The recent reports and studies include the following:

- “Joint report by the CSPLA (High Council for Intellectual Property) / HADOPI / and CNC (National Centre for Cinema): towards an effective application of intellectual property on digital P2P platforms: State of the art and proposals on content recognition tools” (*Rapport CSPLA / HADOPI / CNC: vers une application effective du droit d'auteur sur les plateformes numériques de partage: état de l'art et propositions sur les outils de reconnaissance des contenus*) - April 2020<sup>780</sup>;
- “Illegal access to cultural content on social networks” (*Accès illicite à des contenus culturels sur les réseaux sociaux*) - October 2019<sup>781</sup>
- “Study on the illegal use of live TV programmes” (*Étude: La consommation illicite de programmes TV en direct*) – May 2019<sup>782</sup>
- “Study on the illegal ecosystem of digital cultural goods” (*Étude: L'écosystème illicite de biens culturels dématérialisés*) – January 2019.<sup>783</sup>

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<sup>778</sup> Cour d'appel de Paris Pôle 5, 1ère chambre, 14 octobre 2009, Unibet International c. Fédération française de tennis: <https://www.legalis.net/jurisprudences/cour-dappel-de-paris-pole-5-1ere-chambre-arret-du-14-octobre-2009/>

<sup>779</sup> Tribunal de Grande Instance de Paris, 5ème chambre, 1ère section, 20 mai 2014, Fédération française de football c. Viagogo inc.: <https://www.bertrand-sport-avocat.com/droitdusport/droit-du-sport/jurisprudence/935-la-federation-francaise-de-football-gagne-une-bataille-contre-viagogo>.

<sup>780</sup> <https://www.Hadopi.fr/ressources/etudes/rapport-cspla-Hadopi-cnc-vers-une-application-effective-du-droit-dauteur-sur-les>.

<sup>781</sup> <https://www.Hadopi.fr/ressources/etudes/etude-acces-illicite-des-contenus-culturels-les-reseaux-sociaux>.

<sup>782</sup> <https://www.Hadopi.fr/ressources/etudes/etude-la-consommation-illicite-de-programmes-tv-en-direct>.



In October 2018, the French National Assembly published a report entitled “Report on the conclusion of the works of the information task force on a new regulation of audiovisual communication in the digital age” (*Rapport d’information de l’Assemblée Nationale en conclusion des travaux de la mission d’information sur une nouvelle réglementation de la communication audiovisuelle à l’ère numérique*).<sup>784</sup>

Three recent studies published by the HADOPI are also related to the specific issue of illegal online transmission of sports events:

- “Operational recommendations to guarantee the effectiveness of blocking measures against cultural and sports content piracy” (Rapport de préconisations opérationnelles afin de garantir l’effectivité des mesures de blocage contre le piratage des contenus culturels et sportifs) December 2020.<sup>785</sup> The report recommends building on the public authority’s identification mission (including to detect circumvention strategies and pirated sports content offers), and promoting the exchange of best practice at the international level; to detail certain procedural aspects at the judicial level (e.g. providing the means to target a plurality of intermediaries; providing for a specialised judge for sports piracy; recognising the dynamic character of injunctions issued by the judge, based on Article L. 336-2 CPI; making ISPs responsible for contesting requests made by rightsholders in the context of dynamic injunctions; identifying the real costs of blocking measures); clarifying the public authority’s role as a trusted third party.
- “Online sports broadcasting: developing market and uses – joint study by the CSA and HADOPI” (*La diffusion du sport sur internet: un marché et des usages en développement*) – March 2020.<sup>786</sup> This study analyses the offer available in France and abroad, and the economic models and strategies implemented by the players with regard to user behaviour and profile.
- “Study on the illegal use of live TV programmes” (*Étude: La consommation illicite de programmes TV en direct*) – May 2019.<sup>787</sup> In this study, HADOPI estimated that illicit consumption of live TV programmes already involves a quarter of internet users and that these practices are increasing.

According to this study, the technologies and business models used for the illegal streaming of sports content are:

- illegal Internet Protocol Television (IPTV – 5% of illegal viewing), through a box plus an activation code or through an application. Illegal IPTV gives access to a

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<sup>783</sup> <https://www.Hadopi.fr/ressources/etudes/etude-lecosysteme-illicite-de-biens-culturels-dematerialises>.

<sup>784</sup> [https://www.assemblee-nationale.fr/dyn/15/rapports/cion-cedu/l15b1292\\_rapport-information#](https://www.assemblee-nationale.fr/dyn/15/rapports/cion-cedu/l15b1292_rapport-information#).

<sup>785</sup> [https://www.Hadopi.fr/sites/default/files/sites/default/files/ckeditor\\_files/2020\\_12\\_02\\_rapport\\_moyens\\_operationels\\_accompagnement\\_mesures\\_blocage.pdf](https://www.Hadopi.fr/sites/default/files/sites/default/files/ckeditor_files/2020_12_02_rapport_moyens_operationels_accompagnement_mesures_blocage.pdf).

<sup>786</sup> <https://www.Hadopi.fr/ressources/etudes/la-diffusion-du-sport-sur-internet-un-marche-et-des-usages-en-developpement-etude>.

<sup>787</sup> <https://www.Hadopi.fr/ressources/etudes/etude-la-consommation-illicite-de-programmes-tv-en-direct>.



- large number of TV channels, either in return for a paid subscription to the (illegal) service, or for free (but the service includes a lot of commercials)
- livestreaming (17% of illegal viewing), through online search of URLs pointing toward the specific event
  - social networks (14% of illegal viewing).

In France, there are also studies describing the legal offer of online sports content.

In November 2020, the CSA published a report entitled “The sports capture sector” (*Le secteur de la captation sportive*). This report focused on the quality and attractiveness of legal sports programmes, the evolution of the sports event sector and the role of the major economic/operational players in the past few years (broadcasters, sports event organisers, technical service providers, etc.) as well as the evolution of certain regulations.

Regarding the awareness campaigns related to online piracy, Article L.312-6 of the Education Code provides that:

*Mandatory arts courses are given in elementary and middle schools (...). These courses include at least a music class and a fine arts class. Their purpose is to provide an introduction to arts history and to the different types of arts. (...) During these courses, the students receive information on the dangers of downloading and of illegally providing works protected by intellectual property or a related right for arts creation.*

One of the missions of HADOPI is to promote the development of “legal” offers. To accomplish this goal, workshops in schools and in universities have been organised by the HADOPI.<sup>788</sup>

Pursuant to Law No. 2006-961 of 1 August 2006 regarding intellectual property and related rights in the information society (*Loi n° 2006-961 du 1er août 2006 relative au droit d’auteur et aux droits voisins dans la société de l’information – Loi DADVSI*) ISPs must send awareness messages to their users focusing on the dangers of downloading and providing content illegally.<sup>789</sup>

On 23 March 2015, the major advertising agencies, rightsholders and advertisers signed a Charter of good practice in online advertising for the enforcement of intellectual property and related rights (*Charte de bonne pratique dans la publicité en ligne pour le respect du droit d’auteur et des droits voisins*).<sup>790</sup> The purpose of this charter was for the

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<sup>788</sup> <https://www.Hadopi.fr/organisation/encouragement-au-developpement-de-loffre-legale>.

<sup>789</sup> <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000266350/2021-01-20/>.

<sup>790</sup> <https://www.culture.gouv.fr/Presse/Archives-Presses/Archives-Communiqués-de-presse-2012-2018/Annee-2017/Charte-de-bonnes-pratiques-dans-la-publicite-pour-le-respect-du-droit-d-auteur-et-des-droits-voisins-Remise-du-rapport-d-activite-2015-2016>.

advertising agencies to implement a process to increase the fight against illegal websites, including educational and awareness-raising actions.<sup>791</sup>

### 6.11.6. Data compilation

This country report is based on data compiled by Bénédicte Deleporte-Wentz, Attorney-at-Law, member of the Paris Bar Association (*Barreau de Paris*). She specialises in IT law, including computer law, internet law (e-commerce, online payments, domain names, etc.), data privacy, intellectual property and, more generally, business law (contracts, distribution, etc.).

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<sup>791</sup> <https://www.culture.gouv.fr/Presse/Archives-Presses/Archives-Communiqués-de-presse-2012-2018/Annee-2017/Charte-de-bonnes-pratiques-dans-la-publicite-pour-le-respect-du-droit-d-auteur-et-des-droits-voisins-Remise-du-rapport-d-activite-2015-2016>.



## 6.11.7. Annex

**Table 77. Overview of relevant transposition measures**

EU directives	National law
<b>Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access</b> <sup>792</sup>	French Criminal Code ( <i>Code pénal</i> ) <sup>793</sup>
<b>Article 5 of Directive 98/84/EC – Infringing activities</b>	Articles 323-1 to 323-8 of the Criminal Code
<b>Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (InfoSoc Directive)</b> <sup>794</sup>	Law No. 2006-961 of 1st August 2006 on Copyright and Neighbouring Rights in the Information Society <sup>795</sup>  Intellectual Property Code <sup>796</sup>  Law No. 86-1067 of 30 September 1986 as amended on freedom of communication <sup>797</sup>
<b>Article 6 InfoSoc Directive – Obligations as to technological measures</b>	Article L. 331 - 5 et seq. of the Intellectual Property Code
<b>Article 8 – Sanctions and remedies</b>	Articles 79.1 to 79.5 of the law on freedom of communication
<b>Directive 2004/48/EC on the enforcement of intellectual property rights (IPRED)</b> <sup>798</sup>	Law No. 2007-1544 of 29 October 2007 on the fight against IP infringement <sup>799</sup>
<b>Article 6 IPRED – Evidence and Article 7 IPRED – Measures for preserving evidence</b>	N/A

<sup>792</sup> Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31998L0084&from=EN>.

<sup>793</sup> [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006070719/LEGISCTA000006149839?tab\\_selection=all&searchField=ALL&query=code+p%C3%A9nal&page=1&init=true&anchor=LEGISCTA000006149839#LEGISCTA000006149839](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006149839?tab_selection=all&searchField=ALL&query=code+p%C3%A9nal&page=1&init=true&anchor=LEGISCTA000006149839#LEGISCTA000006149839).

<sup>794</sup> Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (InfoSoc Directive): <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001L0029&from=EN>.

<sup>795</sup> *Loi n° 2006-961 du 1er août 2006 relative au droit d'auteur et aux droits voisins dans la société de l'information* <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000266350/2021-01-19/>.

<sup>796</sup> [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000038835818](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000038835818).

<sup>797</sup> <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006068930/2021-01-19/>.

<sup>798</sup> Directive 2004/48/EC on the enforcement of intellectual property rights (IPRED): [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0048R\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0048R(01)&from=EN)

<sup>799</sup> *Loi n° 2007-1544 du 29 octobre 2007 de lutte contre la contrefaçon* and Decree No. 2008-624 of 27 June 2008 <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000279082>



EU directives	National law
Article 8 IPRED – Right of information	N/A
Article 9 IPRED – Provisional and precautionary measures	N/A
Article 10 IPRED – Corrective measures	Articles 6.VI.1 and 6.VI.2 of the LCEN
Article 11 IPRED – Injunction	Article 6.I.8 of the LCEN
Article 12 IPRED – Alternative measures	N/A
Article 13 IPRED – Damages	N/A
Directive 2000/31/EC on certain legal aspects of information society services (E- Commerce/ECD) <sup>800</sup>	Law No. 2004-575 of 21 June 2004 for confidence in the digital economy ( <i>Loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique – LCEN</i> )
Article 12-15 ECD – Liability of intermediary service providers	Article 6.I.2 (civil liability) and 6.I.3 (criminal liability)
Article 17 ECD – Out-of-court dispute settlement	N/A
Article 20 ECD – Sanctions	Articles 6.VI.1 and 6.VI.2 of the LCEN
Directive EU 2019/790 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (DSM Directive) <sup>801</sup>	Law No. 2019-775 of 24 July 2019 on the creation of a related right for the benefit of press agencies and press publishers <sup>802</sup>  Law No. 2020-1508 of 3 December 2020 on several adaptative provisions to EU law in the economic and financial areas <sup>803</sup>  Article 17 of the DSM directive was transposed by <i>Ordonnance n° 2021-580 du 12 Mai 2021</i>

<sup>800</sup> Directive 2000/31/EC on certain legal aspects of information society services (E- Commerce/ ECD): <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32000L0031&from=EN>

<sup>801</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>

<sup>802</sup> *Loi n° 2019-775 du 24 juillet 2019 tendant à créer un droit voisin au profit des agences de presse et des éditeurs de presse* : <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000038821358/>

<sup>803</sup> *Loi n° 2020-1508 du 3 décembre 2020 portant diverses dispositions d'adaptation au droit de l'Union européenne en matière économique et financière* : <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042607095>



## 6.12. GR – Greece – National legal summary<sup>804</sup>

### 6.12.1. General legal framework

#### 6.12.1.1. National legislation on copyright<sup>805</sup>

In Greece, there are several laws that regulate the scope and the enforcement of copyright:

- Law No. 2121/1993 on copyright and related rights (*Πνευματική Ιδιοκτησία και Συγγενικά Δικαιώματα*)<sup>806</sup> as last amended by Law 4829/2021 (Official Gazette A' 134/31.07.2021)<sup>807</sup> (the “Copyright Law”).<sup>808</sup>
- Law No. 4481/2017 on the collective management of copyright and related rights (*Συλλογική διαχείριση δικαιωμάτων πνευματικής ιδιοκτησίας και συγγενικών δικαιωμάτων, χορήγηση πολυεδαφικών αδειών για επιγραμμικές χρήσεις μουσικών έργων και άλλα θέματα αρμοδιότητας Υπουργείου Πολιτισμού και Αθλητισμού*).<sup>809</sup>

Other relevant laws concerning the enforcement of copyright are as follows:

- Presidential Decree 343/2002 on the legal protection of services based on or consisting of the conditional granting of access (subscriber services)<sup>810</sup>
- Presidential Decree 131/2003 on certain legal aspects of information society services, especially of electronic trade, to the internal market. (Presidential Decree on electronic commerce).<sup>811</sup>

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<sup>804</sup> The country report on Greece incorporates the feedback received from Maria-Daphne Papadopoulou (Hellenic Copyright Organization) during the checking round with the national competent institutions.

<sup>805</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>806</sup> [www.opi.gr/images/library/nomothesia/ethniki/nomoi/2121\\_1993.pdf](http://www.opi.gr/images/library/nomothesia/ethniki/nomoi/2121_1993.pdf); [www.opi.gr/en/library/law-2121-1993](http://www.opi.gr/en/library/law-2121-1993).

<sup>807</sup> [www.kodiko.gr/nomologia/download\\_fek?f=fek/2020/a/fek\\_a\\_248\\_2020.pdf&t=3398553297388296436aefe\\_cfeb3c408](http://www.kodiko.gr/nomologia/download_fek?f=fek/2020/a/fek_a_248_2020.pdf&t=3398553297388296436aefe_cfeb3c408).

<sup>808</sup> Article 66E par. 10A of the Law 2121/1993 was modified by Article 48 of the Law 4821/2021 as regards online infringement of copyrighted works, including the infringement of broadcasters' related rights on sport events (re)transmission.

<sup>809</sup> Law No. 4481/2017, [www.opi.gr/en/library/law-4481-2017](http://www.opi.gr/en/library/law-4481-2017).

<sup>810</sup> Presidential Decree 343/2002 on for the legal protection of services based on or consisting of the conditional granting of access [subscriber service], [www.opi.gr/images/library/nomothesia/ethniki/proedrika\\_diatagmata/343\\_2002.pdf](http://www.opi.gr/images/library/nomothesia/ethniki/proedrika_diatagmata/343_2002.pdf), English version: [www.opi.gr/images/library/nomothesia/ethniki/proedrika\\_diatagmata/343\\_2002\\_en.pdf](http://www.opi.gr/images/library/nomothesia/ethniki/proedrika_diatagmata/343_2002_en.pdf).

<sup>811</sup> [www.opi.gr/images/library/nomothesia/ethniki/proedrika\\_diatagmata/131\\_2003.pdf](http://www.opi.gr/images/library/nomothesia/ethniki/proedrika_diatagmata/131_2003.pdf); English version:



- Law 3057/2002 on the amendment and supplementation of Law No. 2725/1999, regulation of issues of the Ministry of Culture and other provisions<sup>812</sup>
- Law 3524/2007 on Resale rights and enforcement of intellectual property rights<sup>813</sup>
- Law 3592/2007 on Media Concentration and Licensing<sup>814</sup>
- Law 2725/1999 on Amateur and Professional Sport and Other Provisions,<sup>815</sup> as last amended by the Law 4831/2021.<sup>816</sup>

In Greece, copyright infringement is considered both a criminal offence and a civil law violation. Thus, pursuant to Article 65 of the Copyright Law, any violation or threat of infringement of copyright or related rights is considered a civil offence. At the same time, pursuant to Article 66 of the Copyright Law, any act that violates either exclusive economic rights (including radio or television transmission rights) and moral rights of authors, namely the disclosure and integrity rights or the neighbouring (or “related”) rights (economic rights) of performers, producers and broadcasters, is considered a criminal offence.

Greek law differentiates between criminal offences in the case of copyright infringement depending on two elements: (i) the financial gain; or (ii) the commercial scale of the criminal offence.<sup>817</sup>

Moreover, according to Article 65A of the Copyright Law, administrative fines may also be imposed. If the violation concerns the sale or public distribution of computer software, the perpetrator may be fined EUR 1 000 for each illegal copy of the computer

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[www.opi.gr/images/library/nomothesia/ethniki/proedrika\\_diatagmata/131\\_2003\\_en.pdf](http://www.opi.gr/images/library/nomothesia/ethniki/proedrika_diatagmata/131_2003_en.pdf).

<sup>812</sup>[www.kodiko.gr/nomologia/download\\_fek?f=fek/2002/a/fek\\_a\\_239\\_2002.pdf&t=1e73abb006745f78df5a2943616801e3](http://www.kodiko.gr/nomologia/download_fek?f=fek/2002/a/fek_a_239_2002.pdf&t=1e73abb006745f78df5a2943616801e3).

<sup>813</sup>[www.wipo.int/edocs/lexdocs/laws/el/gr/gr298el.pdf](http://www.wipo.int/edocs/lexdocs/laws/el/gr/gr298el.pdf).

<sup>814</sup>[www.esr.gr/wp-content/uploads/NOMOS\\_3592-2007.pdf](http://www.esr.gr/wp-content/uploads/NOMOS_3592-2007.pdf).

<sup>815</sup>[www.kodiko.gr/nomologia/download\\_fek?f=fek/1999/a/fek\\_a\\_121\\_1999.pdf&t=d14d621df970dadf1a633129b499a9c9](http://www.kodiko.gr/nomologia/download_fek?f=fek/1999/a/fek_a_121_1999.pdf&t=d14d621df970dadf1a633129b499a9c9).

<sup>816</sup>[www.kodiko.gr/nomologia/download\\_fek?f=fek/2019/a/fek\\_a\\_77\\_2019.pdf&t=5475f687e74743be42f290be276ee441](http://www.kodiko.gr/nomologia/download_fek?f=fek/2019/a/fek_a_77_2019.pdf&t=5475f687e74743be42f290be276ee441).

<sup>817</sup> Article 66(3) of Law No. 2121/1993 on copyright and related rights provides that:

If the financial gain sought or the damage caused by the perpetration of an act listed in paragraphs (1) and (2), above, is particularly great, the sanction shall be not less than two years imprisonment and a fine of from six thousand (6 000) to thirty thousand (30 000) euros. If the guilty party has perpetrated any of the aforementioned acts “by profession or at a commercial scale” or if the circumstances in connection with the perpetration of the act indicate that the guilty party poses a serious threat to the protection of copyright or related rights, the sanction shall be imprisonment of up to 10 years and a fine of from 5 to 10 million drachmas [..EUR 15 000 to EUR 60 000], together with the withdrawal of the trading licence of the undertaking which has served as the vehicle for the act. The act shall be likewise deemed to have been perpetrated by way of standard practice or if the guilty party has on a previous occasion been convicted of a contravention pursuant to the provisions of the Article or for a violation of the preceding copyright protection legislation and sentenced to a non-redeemable period of imprisonment. Any infringement of copyright and related rights in the form of felony is tried by the competent Three-member Court of Appeal for Felonies.” (as amended with article 54 par. 9 a) Law 4481/2017).

software (Article 65A(1)). If the violation concerns the sale or public distribution of a sound recording, the perpetrator may be subject to an administrative penalty equal to the number of items of illegal recordings (determined in the arrest and seizure report) multiplied by EUR 20 for each individual sound recording contained therein. The minimum administrative penalty is EUR 1 000 (Article 65A (2)).

#### 6.12.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into the national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>818</sup> has not been transposed to the date (as at October 2021) and no draft has been made publicly available.

**Table 78. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	N/A
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	Law No. 3524/2007 on resale rights and enforcement of intellectual property rights; Law No. 2121/1993 on copyright and related rights
<b>InfoSoc Directive</b>	Law No. 3057/2002 on amendment and supplementation of Law No. 2725/1999, regulation of issues of the Ministry of Culture and other provisions  Law No.2121/1993 on copyright and related rights as last amended by Law No. 4829/2021
<b>E-Commerce Directive</b>	Presidential Decree 131/2003 on electronic commerce
<b>Conditional Access Directive</b>	Presidential Decree 343/2002 on the legal protection of services based on or consisting of the conditional granting of access [subscriber service] (criminal and administrative sanctions)

*Source: Greek response to European Audiovisual Observatory standardised survey*

<sup>818</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.



## 6.12.2. National rules applicable to audiovisual sports content

### 6.12.2.1. Legal definitions of “broadcaster” and “sports event organiser”

In Greece, there is no legal definition of “broadcaster”. However, the concept of broadcaster can be inferred from the combination of various provisions of Greek audiovisual legislation. In particular, Article 2(6) of Law No. 3592/2007 on media concentration and licensing (*Συγκέντρωση και αδειοδότηση Επιχειρήσεων Μέσων Ενημέρωσης και άλλες διατάξεις*) provides the following broad definition of a “content provider”:

*A company that delivers to the general public a full broadcast content, the duration of which may be twenty-four hours or less. These companies can provide services of various kinds, namely services of digital terrestrial television (art. 2(14)), analogue TV (art. 2(15)), satellite TV (art. 2(16)), pay TV (art. 2(17)) or interactive TV (art. 2(24)).*

Moreover, Article 84A (1) (b) of Law No. 2725/1999 on Amateur and Professional Sport (*Ερασιτεχνικός - Επαγγελματικός Αθλητισμός και άλλες διατάξεις*), as last amended by Law No. 4831/2021, enumerates the following different categories of communication services providers (broadcasters):

*(aa) licensed digital terrestrial television providers, including public broadcasters, (bb) licensed subscription services (pay TV) and (cc) licensed non-linear audiovisual media services (on-demand TV) provided from a list of programmes at the user’s request.*

Furthermore, there is no legal definition for “sports event organisers” in national law. Law No. 2725/1999 on Amateur and Professional Sport, as last amended by Law No. 4831/2021, provides a definition of a sports club (Article 1) and defines the exclusive rights attributed to these clubs as a result of a sports event organisation (Article 84). In particular, pursuant to Article 1 of said law:

*A sports club is defined as the association of natural persons, according to the provisions of Article 78 s. of the Civil Code, which has as its main purpose the systematic cultivation and the development of athletes’ potential in order to facilitate their participation in sports event competitions.*

Based on these provisions, it can be assumed that a sports events organiser is the legal entity that hosts the sports event and has the authority to permit, through remuneration, the broadcasting or retransmission of the event, by any means, based on an exclusive or a non-exclusive licence.



#### 6.12.2.2. Legal protection related to sports events

A sports event is not considered an intellectual creation under Greek copyright legislation. Sports event organisers are entitled to legal protection under specific legislation, by which they enjoy absolute and exclusive economic rights over a sports event as the legal entities organising and operating the event.

Pursuant to Article 84(1) of Law No.2725/1999 on Amateur and Professional Sport, as last amended by Law No.4831/2021, every sports club or professional sports entity shall enjoy the right to remuneration for authorising:

- i. radio or television broadcasting or retransmission, by any technical means, of sports events hosted by said club or entity;
- ii. the recording and reproduction of sports events or their snapshots, by any means and in any fixation material;
- iii. the public distribution of said reproduction material by transfer of ownership, rental or public lending.

Sports federations have the same rights with regard to the events of national teams or cup competition matches (Article 84(2)). Sports clubs may transfer such rights to federations or leagues (Article 84(4)). Moreover, pursuant to Article 84(2) of said law, the rights attributed to sports event organisers can be transmitted to broadcasters through an exclusive or a non-exclusive licence. Finally, pursuant to Article 84A<sup>819</sup> of said law, the rights<sup>820</sup> with regard to football league matches, which are akin to related rights, are attributed to professional football leagues (Super League 2 and the Football League) and can be also transferred to broadcasters.

The rights attributed to sports event organisers by Law No.2725/1999 are of a *sui generis* nature, amounting to exclusive, absolute, time-limited, waivable, and transferable related rights. The Copyright Law does not protect them as such, as sports events are not considered an intellectual creation. However, the transmission of the event by the broadcaster is protected by related rights under Article 48(1) of the Copyright Law. Through these related rights, broadcasters are able to protect their broadcasts, including sports events, from illicit transmission or retransmission, regardless of the transmission method or means. More specifically, pursuant to Article 48 (1) of Law No.2121/1993, radio and television organisations have the right to authorise or prohibit the following acts:

- a) transmission of their broadcasts by any means such as wireless waves, satellites or cable;
- b) public communication of their broadcasts in places accessible to the public against payment of an entrance fee;

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<sup>819</sup> [https://lawdb.intrasoftnet.com/nomos/2\\_nomothesia\\_artl\\_current.php](https://lawdb.intrasoftnet.com/nomos/2_nomothesia_artl_current.php).

<sup>820</sup> The rights attributed to sports event organisers are considered akin to related rights in Copyright Law because of their exclusive and absolute character.



- c) fixation of their broadcasts in sound or audiovisual recordings, regardless of whether the broadcasts are transmitted by wire or by air, including by cable or satellite broadcasting;
- d) direct or indirect, temporary or permanent, partial or total reproduction by any means and in any form of the fixation of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including cable or satellite;
- e) public distribution of recordings containing the fixation of their broadcasts, including the copies thereof, by sale or other means;
- f) rental or public lending of recordings containing the fixation of their broadcasts; such rights are not exhausted by any sale or other act of distribution of said recording;
- g) making available to the public of the fixation of their broadcast, by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them; this right is not exhausted by any act of making available to the public, in the sense of this provision.

It follows that Article 48 (1) (a) and (g) enables broadcasters to protect their transmissions by wire or wireless means, including online transmissions of sports events.

Regarding the entitlement to take legal action in the case of infringement of broadcasting or online transmission of a sports events, Article 66E (10A)(1)<sup>821</sup> of the Copyright Law provides for a specific protection available to rightsholders, in the case of:

*imminent and large-scale violation of protected copyright and related rights on the internet for events of either national or global viewing which are going to be transmitted simultaneously with their conduct.*

According to this provision, the beneficiary of online transmission rights (i.e. usually the broadcaster who is entitled to transmit the sports event on the basis of a licence attributed by the sports club or the sports federation) may file a request before the Committee for the Notification of Copyright and Related Rights Infringement on the Internet (EDPPI),<sup>822</sup> an administrative body aiming at dealing with copyright and related rights online infringement cases through an extrajudicial mechanism.<sup>823</sup> The broadcaster who owns the online transmission rights may also file an action before the civil courts for injunction measures against internet service providers (ISPs) on the basis of Article 64A of the Copyright Law.

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<sup>821</sup> The procedure described under Article 66E paragraph 10A of the Law 2121/1993 was recently modified by Article 48 of Law 4821/2021. For further details, please see at Section 6.12.3.5 of this country report.

<sup>822</sup> <https://opi.gr/en/committee>.

<sup>823</sup> Unofficial English translation available here: <https://opi.gr/en/library/law-2121-1993#a66e>.

### 6.12.2.3. Other specific rules applicable to sport events

As mentioned earlier, Greek legislation provides for specific protection for sports event organisers, as provided in Law No. 2725/1999 on amateur and professional sport, as recently amended by Law No. 4612/2020.

There are no specific rules about the use of sports content in social media in Greek law.

**Table 79. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
<b>Broadcaster</b>	No	Related rights
<b>Sports events organiser</b>	No	Audiovisual sports rights (i.e. the right to remuneration for authorising the broadcast and retransmission of the sports event); no entitlement to take legal action based on the Copyright Law

*Source: Greek response to European Audiovisual Observatory standardised survey*

## 6.12.3. Remedies and sanctions applicable in the event of infringement

### 6.12.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

The Copyright Law was amended to introduce new articles which impose civil or criminal sanctions for violations taking place in the digital environment (i.e. online transmission of any content protected by related rights) and facilitate the rightsholder to protect his/her rights. The articles are as follows: Article 65 (civil sanctions, including indemnification); Article 64 (injunction measures and precautionary evidence, including precautionary seizure of items); Article 64A (injunction measures against intermediaries); Article 66A (technological measures); Article 66B (rights management information).

In light of these provisions, the beneficiary may: (i) file an application for an injunction against intermediaries (i.e. internet access providers) whose services are used for the illicit transmission of the sports event (Article 64A); (ii) file a lawsuit in the civil courts against the infringer (ISPs, broadcasters or others) asking for the cessation of the infringement and its omission in the future (Article 65). The lawsuit may refer to an actual



infringement or threat of infringement; (iii) seek the criminal conviction of the infringer (ISPs, broadcasters or others) (Article 66).

Furthermore, the Copyright Law regulates the presentation of sufficient evidence to support the claim in the case of copyright infringement and the right of information (Article 63), as well as the measures for preserving that evidence, including provisional and precautionary measures (Article 64). In particular, new Article 63A paragraphs (1) and (2) of the Copyright Law enables the court to order the communication by the infringer of evidence which lies under his/her control or of information on the origin and distribution networks of the goods or services which violate copyright or related rights.

Moreover, pursuant to Article 64, the court may take measures against an alleged infringer, (such as an injunction intended to prevent or prohibit an imminent infringement under threat of a penalty). The court can order injunction measures or precautionary evidence without needing to specify the works infringed or under threat of infringement. The court may also order the precautionary seizure of the property of the alleged infringer, including the blocking of his/her bank accounts in the case of an infringement committed on a commercial scale. The injunction measures referred to may, in appropriate cases, be taken without the defendant having been heard, in particular where any delay would cause irreparable harm to the rightsholder.<sup>824</sup>

Concerning the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive), Presidential Decree 343/2002 establishes criminal and administrative sanctions for any use of illicit devices or techniques used to circumvent access to subscription television services, as well as legal remedies for any act which aims to share decryption keys either through devices or through software in order to facilitate illegal access to protected subscription services (i.e. decoding algorithm devices or software). When a prohibited activity among those provided for in Article 4 of Presidential Decree 343/2002 is conducted in order to circumventing the controlled access, imprisonment of at least one month and a fine of between EUR 500 and EUR 15 000 are provided as criminal sanctions.

Moreover, Article 5(2) of said Presidential Decree establishes administrative sanctions that can be imposed by the National Council of Radio and Television or the Hellenic Telecommunications and Post Commission (EETT). These provisions shall apply *mutatis mutandis* to any private use of those illicit devices if the user knew or was able to know, in accordance with common experience, that the above use or possession is an unlawful activity.

The abovementioned provisions may apply when a natural or legal person provides illicit software that could be used to circumvent access to subscription television services, such as online transmission of sports events: however, these provisions aim at prohibiting the use of illicit devices and do not apply to the illicit transmission of the

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<sup>824</sup> For further details, please see at: <https://opi.gr/en/library/law-2121-1993#a64>.

audiovisual content per se. In this latter case, the provisions of the Copyright Law shall be applied.

#### National bodies with competences on copyright enforcement

As mentioned above, in Greece, the Committee for the Notification of Copyright and Related Rights Infringement on the Internet (EDPPI) is an administrative body, which was established under Law 4481/2017, and has specific competences on infringements of copyright and related rights on the internet, as provided for by Article 66E(2) of the Copyright Law. In particular, pursuant to Article 66E(1) and (5)(a) and (b) of the Copyright Law, the EDPPI has the authority to examine any complaint for infringement of copyright or related rights committed through the internet, on condition that the same case is not pending before any court. This procedure includes only the intermediaries (internet access providers and hosting services), as well as the administrators or owners of the websites, while excluding end-users.

The recent amendments to Article 66E of the Copyright Law by Article 25 of Law No. 4708/2020 and Article 48 of Law No. 4821/2021, introduce a procedure of dynamic blocking injunctions into Greek legislation (concerning all “infringement of copyright and related rights on the internet”).<sup>825</sup>

The EDPPI may issue a live (dynamic) blocking order against the infringer by means of a decision that has to be issued no later than 24 hours before the transmission of the event and may impose a fine for each day of non-compliance.<sup>826</sup> The procedure is initiated at the request of the rightsholder, who must pay the fee required for the examination of the case.

#### 6.12.3.2. Codes of conduct and Memorandums of Understanding

There are no codes of conduct relating to the enforcement of intellectual property rights and the fight against online piracy adopted by public and/or private entities.

However, on 29 March 2013, a Framework of Cooperation was signed under the auspices of the Hellenic Copyright Organisation (HCO) between collective management organisations and ISPs to tackle online piracy. The cooperation aimed to inform and raise public awareness of the negative impact of piracy of online works on culture and the economy, as well as the need to respect copyright and related rights. Through this

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<sup>825</sup> The new procedure allows any type of injunction to cease the infringement, including “to prevent the recurrence of infringement”. In particular, Article 66 E(8) provides that “[w]here the Committee [EDPPI] substantiates that copyright or related rights have been infringed, it shall ask those that are notified to remove the infringing content from the website where it has been illegally posted or to block access to it and take any other measure deemed appropriate by the Committee that aims at the discontinuation of the infringement, the prevention of recurrence and/or the prevention of infringement.”

<sup>826</sup> For further details about the procedure that was recently amended, please refer to section 6.12.3.5. of this country report.



Memorandum of Understanding, the HCO held contacts with Google and YouTube on tackling online piracy.

#### 6.12.3.3. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

If the rightsholder has made use of the procedure indicated by the provider in due time but this has not given any result, the rightsholder (or the collective management organisation assigned by him/her) may submit an application, together with the relevant evidence to the EDPPI (see section 6.12.3.2.), on the basis of Article 66E(4) of the Copyright Law.

If the application is accepted by the EDPPI and a procedure is initiated, within 10 working days from receipt of the application, the EDPPI shall simultaneously notify the internet access providers and, where possible, the hosting providers, the administrators and/or owners of the websites and/or of the domain names referred to in the application.

Such notice shall include at least the following: an exact definition of the rights allegedly infringed; the legal provisions which, according to the declaration of the rightsholder, have been violated; a summary of the events and the outcome of the evaluation of evidence; the name of the competent person to whom objections may be raised; the conditions upon which the procedure may be terminated and a mention of the possibility of voluntary compliance by the parties involved.

The EDPPI shall inform the administrator or the owner of the websites referred to in the application and/or the domain names concerning the application filed, by communicating the application by any means and allowing him/her a period of five working days to present his/her views. The EDPPI shall issue the decision no later than 40 working days from receipt of the application (Article 66E paragraph 7).

The filing of a procedure before the EDPPI does not suspend or affect the filing of claims for the same case before the courts. However, if the same claimant has lodged the same claim before the courts, the EDPPI shall archive the case (Article 66E paragraph 12).

#### 6.12.3.4. Removal and blocking orders

As previously mentioned in relation to national remedies,<sup>827</sup> in the case of alleged infringement of copyright and related rights, the court may order injunction measures or precautionary measures without needing to specify the works infringed or under threat of infringement (Article 64). The court may also issue against the alleged infringer an

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<sup>827</sup> Please see section 6.12.3.1. of this country report.



injunction intended to prevent any imminent infringement, on a provisional basis and subject, where appropriate, to a penalty payment. In addition, a blocking injunction may be imposed by the court against intermediaries whose services are used by a third party to infringe a copyright or related right (including transmission of online sports events) under Article 64A of the Copyright Law.

In cases of copyright and related rights infringement on the internet, the rightsholder may also follow the special procedure provided for in Article 66E of the Copyright Law, through the EDPPI. According to this procedure, where the EDPPI substantiates the fact that copyright or related rights have been infringed, it shall require those that have been notified to remove the infringing content from the website where it has been illegally posted or to block access to it and take any other measures deemed appropriate by the EDPPI that aim at the discontinuation of the infringement, the prevention of recurrence or/and the prevention of infringement.

In case of large-scale infringement, the EDPPI may decide, instead of content removal, the blocking of access to this content and to take any other measures deemed appropriate by the EDPPI aimed at the discontinuation of the infringement, the prevention of recurrence and/or the prevention of further infringement.

Where the website is hosted on a server outside the Greek territory, the EDPPI shall ask the internet access provider to block access to this content and to take any other measure deemed appropriate by the EDPPI aimed at the discontinuation of the infringement, the prevention of recurrence and/or the prevention of further infringement.

Furthermore, as previously mentioned, Article 66E(10A) of the Copyright Law provides for a swift procedure of immediate (live) blocking measures, that aims to facilitate the prevention of illegal broadcasting of events viewed nationally or globally (e.g. sports events), which can also be applied to clones of the original site that appear with a new Internet protocol (IP) address or URL or domain name, if it turns out to host the same content.

In concrete terms, the conditions to be fulfilled for a beneficiary to make a request are the following:

- a) a large-scale infringement of copyright or related rights on the internet in relation to events of either national or global viewership (such as the Champions' League) which are going to be transmitted simultaneously with their occurrence;
- b) the infringement will take place, by way of example, through certain uniform resource locators (specific URLs), IP addresses or domain names, which support the unauthorised subscription connection by any means and, in particular, through the use of passwords or a decoder; and
- c) there is an urgent need to prevent an immediate, serious and imminent danger or irreparable damage to the public interest or to the rightsholder.

If these circumstances are present, the EDPPI may order the blocking of access to the website or domain name in question for a period of at least 15 days. For the purpose of taking this decision, it is sufficient for the EDPPI to consider probable that an





infringement of copyright or related rights is imminent in accordance with these provisions.

The application of the rightsholder shall be submitted before the EDPPI at least 15 working days prior to the scheduled transmission of the event. If the request is accepted, the EDPPI shall issue a decision ordering the internet access providers to block access to the content within a period of not less than six hours and not more than 12 hours from the time at which the decision is sent. The decision of the EDPPI shall be issued and sent by e-mail to the rightsholder and the service provider at least 24 hours before the transmission of the event. Within the same period, the decision shall be notified to the EETT. In the case of non-compliance with the decision, the EDPPI shall impose a fine of EUR 500 up to EUR 1 000 for each and every day of non-compliance. The seriousness of the infringement and its repetition shall be amongst the criteria taken into account. The commencement of the proceedings before the EDPPI does not suspend or affect the submission of claims for the same case before the courts. If, however, the same claimant has filed the same claim before the courts, the EDPPI shall archive the case.

The EDPPI's decisions are addressed to ISPs (i.e. to internet access providers licensed and registered in the Register of Network and Electronic Communications Providers held by the EETT). To fulfil its mandate, the EDPPI maintains its own register according to the provisions of Article 66E (10A)(7) of the Copyright Law. The register is known as "a special register" and contains the following information: name, company name, distinctive title and e-mail address of the provider and of the representative of the latter. The provider has to send all this information within a period of 30 days from the date that Law 4761/2020 enters in force, informing the EETT of any modifications as well.

It is worth mentioning that dynamic blocking injunctions based on Article 66E(10A) could not so far be easily imposed in cases of online piracy of live sports events, due to the fact that the sites providing access to illegal live streaming of sports events were not always known in advance and the procedure requiring 24 hours' prior notification of the EDPPI's decision could not be applied in such case. This was probably the reason why there were no decisions on live sports infringements until very recently.<sup>828</sup> With a view to address this situation, Article 66E paragraph 10A of the Law 2121/1993 was recently modified by Article 48 of Law 4821/2021, in order to facilitate the live dynamic blocking of webpages "stealing" from platforms, especially sport events. Under the new provision, after the submission by the rightsholder of his/her application to the EDPPI and once the latter has been accepted by the EDPPI, the EDPPI issues a resolution by which it invites the ISP to suspend access to the content and to take any other measure deemed applicable and aimed at the suspension, and/or the prevention of repeated or future infringements, within a period that cannot be (as previously) less than six hours and more than 12 hours from the transmission of the resolution (Article 48, paragraph 2a of Law 4821/2021). ISPs are required to send statements of compliance with

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<sup>828</sup> Two decisions were issued on 27 and 28 October 2021.

the EDPPI's resolution to the EETT immediately. If, after the issuance of the EDPPI's resolution, the illegal transmission is transferred to a new pirate webpage, the rightsholder submits to the EETT (with a copy to the EDPPI) additional information concerning the repetition of the infringement, even during the illegal transmission (Article 48, paragraph 2c). If the violation is deemed probable, the EETT promptly orders the ISP via email to suspend access to the pirate webpage. ISPs with more than 50 000 customers are obliged to suspend access to the content within the time limit set by the EETT, which may not be longer than 30 minutes after the order is issued. The order is valid until the issuance of a relevant supplementary resolution, which is issued within a maximum of one month (Article 48, paragraph 2c).

According to these provisions, the EDPPI can block access to a specific webpage before or during the illegal (re)transmission of a sport event. This provision should provide a more effective response to the current practice of pirates who, when access to their webpage is blocked, create another one with a similar title and continue their activity without being bothered.

#### 6.12.3.5. Measures against end-users

There is no application of measures against end-users. All the blocking decisions apply only to the intermediaries.

#### 6.12.3.6. Criminal sanctions

According to provision 66(1), (2) (D) (g) and (3) of the Copyright Law, the beneficiary may seek the imposition of a criminal conviction on the infringer (ISP, broadcaster or other). The following criminal sanctions can be applied: (i) imprisonment of up to one year; and (ii) a fine of between EUR 2 900 and EUR 15 000. If the infringer acts for financial gain, the sanction shall be no less than two years of imprisonment and a fine of between EUR 6 000 and EUR 30 000. If the infringer has perpetrated any of the unlawful acts in a professional capacity or on a commercial scale or if the circumstances of the acts indicate that the infringer represents a serious threat to the protection of copyright or related rights, the sanction shall be imprisonment for up to 10 years and a fine of between approximately EUR 14 673 and EUR 29 347, as well as the withdrawal of the trading licence from the undertaking which has served as the vehicle for the act.

**Table 80. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	Yes
Specific rules on the use of sports content in social media	No

Specific features on sports	Description
Specific competent bodies (other than judicial bodies)	Yes
Entitlement to take legal action	Yes, rightsholders and licensees
Codes of conduct	No
Specific proceedings	Yes
Specific remedies	No

Source: Greek response to European Audiovisual Observatory standardised survey

**Table 81. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	Yes
Removal and blocking injunctions	Yes
Dynamic and/or live blocking injunctions	Yes
De-indexing injunctions	N/A
Damages and orders to cease and desist	Yes
Administrative offence and remedies	Yes
Notice and take-down procedures	Yes

Source: Greek response to European Audiovisual Observatory standardised survey

#### 6.12.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures towards end-users and criminal sanctions, in relation to online infringement of audiovisual sports content.



**Table 82. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
Communication to the public	N/A	N/A
Hosting providers' knowledge and awareness of illegal activity	The notification of the infringement by the rightsholder can prove the ISP's actual knowledge of illegal activity.	Athens Court of First Instance: Judgment 4658/2012
Notice and take-downs	N/A	N/A
Measures against end-users	N/A	N/A
Criminal sanctions	N/A	N/A

Source: Greek response to European Audiovisual Observatory standardised survey

#### 6.12.4.1. Communication to the public

In Greece, there are no cases related to the concept of communication to the public in relation to audiovisual sports content.

However, Greek courts have issued judgments concerning the infringement of the right of communication to the public based on Article 64A of the Copyright Law.

In particular, there are two judgments that deal with infringements related both to the music industry (case No. 4658/2012 of the Athens Court of First Instance) and to the audiovisual industry (case No. 1909/2017 of the Athens Court of Appeals). In these cases, the courts, according to Article 64A of the Copyright Law, ordered injunction measures such as the interruption of access to the illicit websites for end-users established in Greece.

Moreover, the EDPPI issued decisions aimed at blocking illicit websites on the basis either of Article 66E(1) (blocking injunction) or Article 66E(10A) (dynamic blocking injunction) of the Copyright Law. These decisions concern the music industry, the audiovisual industry and the editor's related rights.

#### 6.12.4.2. Online infringement of audiovisual sports content

In Greece, there are no cases related to online infringement of audiovisual sport content.<sup>829</sup>

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<sup>829</sup> Two decisions have been issued 27 & 28/27.10.2021, Committee for the Notification of Copyright and Related Rights Infringement on the Internet (EDPPI).

#### 6.12.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

With regard to knowledge and awareness, Greek courts require the notification of the infringement by the rightsholder to prove the ISP's "actual knowledge" of illegal activity.

For example, in Judgment 4658/2012, the Athens Court of First Instance ordered the provisional suspension of access to a specific internet address as an injunction measure. This case was examined on the basis, among others, of Article 64A (injunction) of the Copyright Law, according to which:

*rightsholders may apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right. The same applies for the sui generis right of database maker.*

Article 64A does not contain any legal requirement for "actual knowledge" of the provider in order for the courts to impose injunction measures aimed at stopping or preventing the violation. The mere fact that the provider's services are used by a third party to infringe copyright or related rights is considered (by the legislator) to be a sufficient basis for the injunction measures.

On the other hand, in the event that a complaint for infringement of copyright or related rights committed through the internet has been submitted by the rightsholder, the EDPPI shall inform the intermediaries (internet access provider and hosting services), as well as the administrator or owner of the website, of said complaint within 10 working days from its submission. Contrary to court procedure (where the plaintiff has to prove that the ISP has been notified about the illicit activity), in the administrative procedure this notification is the responsibility of the public authority (the EDPPI).<sup>830</sup>

#### 6.12.4.4. Notice and take-down requirements

According to the case law in Greece, there are no cases concerning the requirements of the notification procedure with respect to copyright infringements of audiovisual sports content.

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<sup>830</sup> Please refer to section 6.12.3.4. of this country report for further details.



#### 6.12.4.5. Removal and blocking orders

With reference to the measures to remove and block illegal content, the injunctions most commonly applied by the EDPPI are: (i) blocking injunction measures and (ii) dynamic blocking injunction measures. With regard to the former, in most cases since 2018, the EDPPI has ordered internet access providers to block access to infringing websites for three years. The EDPPI's decision has to be executed within 48 hours of notification. In these cases, the infringement concerned either musical or audiovisual works. There is also one decision that concerned the infringement of an editor's related rights. With regard to the dynamic blocking injunction measures, the EDPPI has issued two decisions (No. 16/2020 and No. 17/2020) on the basis of the new Article 66E (10A) of the Copyright Law on copyright and related rights, imposing a three-year dynamic blocking injunction against internet access providers for copyright infringement of audiovisual content.

#### 6.12.4.6. Measures against end-users ordered by the courts

No actions or measures against end-users have been taken by the courts in Greece.

#### 6.12.4.7. Compensation criteria adopted by the courts

There are no cases on the compensation criteria adopted by the courts.

#### 6.12.4.8. Criminal sanctions ordered by the courts

There are no criminal sanctions ordered by the courts.

### 6.12.5. Reports and studies

In Greece there are some studies conducted by the Athens University of Economics and Business (2007)<sup>851</sup> and the article "Notice-and-Takedown Procedure under Greek Intellectual Property Law 4481/2017", Jipitec 9 (2018), by Charis Tsigou, however none relate specifically to sports piracy.

There are no reports considering the specific issue of illegal online transmissions of sports events nor are there any on technologies and business models used for the illegal streaming of sports content. Furthermore, there are no studies describing the legal offer of online sports content.

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<sup>851</sup> [https://opi.gr/images/stats/Music\\_Advanced.pdf](https://opi.gr/images/stats/Music_Advanced.pdf); [https://opi.gr/images/stats/Films\\_Advanced.pdf](https://opi.gr/images/stats/Films_Advanced.pdf).

There have been awareness campaigns related to online piracy: the HCO has developed numerous actions for combating piracy of copyrighted works, as shown on its website under the section “Observatory for Piracy”.<sup>832</sup> The Observatory for Piracy (OPI) has also created a special website (ENJOYLEGAL) aimed at facilitating the search of online legal content, such as music and films.<sup>833</sup>

### 6.12.6. Data compilation

This country report is based on data compiled by Charis Tsigou, a Supreme Court Attorney at Law focusing on copyright, trademark, patents, informatics, and electronic commerce, at the Tombros Markoulakis Karatzas Law Firm (TMK Law Firm).

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<sup>832</sup> <https://opi.gr/en/about-copyright/observatory-for-piracy>.

<sup>833</sup> <https://opi.gr/en/about-copyright/enjoy-legal>.



## 6.12.7. Annex

**Table 83. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive (98/84/EC)</b>	Presidential Decree 343/2002 on for the legal protection of services based on or consisting of the conditional granting of access [subscriber service] <i>(Εναρμόνιση της ελληνικής νομοθεσίας στις διατάξεις της Οδηγίας 98/84 εκ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 20ής Νοεμβρίου 1998 για τη νομική προστασία των υπηρεσιών που βασίζονται ή συνίστανται στην παροχή πρόσβασης υπό όρους)</i>
<b>Article 5 of Directive 98/84/EC – Infringing activities</b>	Article 2(d) Article 4
<b>InfoSoc Directive (2001/29/EC)</b>	Law No. 3057/2002 on amendment and supplementation of Law No.2725/1999, regulation of issues of the Ministry of Culture and other provisions <i>(Τροποποίηση και συμπλήρωση του Ν. 2725/1999, ρύθμιση θεμάτων Υπουργείου Πολιτισμού και άλλες διατάξεις)</i>
<b>Article 6 InfoSoc – Obligations as to technological measures</b>	Article 66 A
<b>Article 8 InfoSoc paragraphs 1 and 2 – Sanctions and remedies</b>	Articles 65, 64, 64A, 66B
<b>IPRED (2004/48/EC)</b>	Law No.3524/2007 on resale rights and enforcement of intellectual property rights <i>(Εναρμόνιση της ελληνικής νομοθεσίας προς τις Οδηγίες 2001/84/ΕΚ και 2004/48/ΕΚ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 27ης Σεπτεμβρίου 2001 και 29ης Απριλίου 2004 σχετικά με το δικαίωμα παρακολούθησης υπέρ του δημιουργού ενός πρωτοτύπου έργου τέχνης και την επιβολή των δικαιωμάτων της διανοητικής ιδιοκτησίας αντίστοιχα και άλλες διατάξεις)</i>
<b>Article 6 IPRED – Evidence and Article 7 IPRED – Measures for preserving evidence</b>	Article 63A
<b>Article 8 IPRED – Right of information</b>	N/A
<b>Article 9 IPRED – Provisional and precautionary measures</b>	Article 64 Copyright Law
<b>Article 10 IPRED – Corrective measures</b>	N/A
<b>Article 11 IPRED – Injunctions</b>	Article 64





EU directives	National law
Article 12 IPRED – Alternative measures	N/A
Article 13 IPRED – Damages	N/A
E-Commerce Directive (2000/31/EC)	Presidential Decree 131/2003 on electronic commerce ( <i>Προσαρμογή στην Οδηγία 2000/31 του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου σχετικά με ορισμένες νομικές πτυχές των υπηρεσιών της Κοινωνίας της Πληροφορίας, ιδίως του ηλεκτρονικού εμπορίου, στην εσωτερική αγορά</i> )
Article 12-15 E-Commerce Directive – Liability of intermediary service providers	Articles 11 to 15
Article 17 E-Commerce Directive – Out-of-court dispute settlement	N/A
Article 20 E-Commerce Directive – Sanctions	Article 19
DSM Directive (EU 2019/790)	Not transposed to the date (as at October 2021)



## 6.13. HR – Croatia – National legal summary<sup>834</sup>

### 6.13.1. General legal framework

#### 6.13.1.1. National legislation on copyright<sup>835</sup>

In Croatia, the Copyright and Related Rights Act (*Zakon o autorskom pravu i srodnim pravima*, NN 167/03, 79/07, 80/11, 125/11, 141/13, 127/14, 62/17, 96/18 – the Copyright Act) is the law that regulates the scope and enforcement of copyright and related rights.<sup>836</sup>

Other laws are relevant in relation to copyright enforcement, as follows:

- The Criminal Code (*Kazneni zakon*, NN 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21)<sup>837</sup>
- The Criminal Procedure Code (*Zakon o kaznenom postupku*, NN 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19)<sup>838</sup>
- The Misdemeanour Act/Small Offences Act (*Prekršajni zakon*, NN 107/07, 39/13, 157/13, 110/15, 70/17, 118/18)<sup>839</sup>
- The Obligation Act (*Zakon o obveznim odnosima*, NN 35/05, 41/08, 125/11, 78/15, 29/18)<sup>840</sup>
- The Civil Procedure Act (*Zakon o parničnom postupku*, NN SL SFRJ 4/77, 36/77, 6/80, 36/80, 43/82, 69/82, 58/84, 74/87, 57/89, 20/90, 27/90, 35/91 i NN 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 89/14, 70/19)<sup>841</sup>
- The Execution Act (*Ovršni zakon*, NN 112/12, 25/13, 93/14, 55/16, 73/17, 131/20).<sup>842</sup>

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<sup>834</sup> The country report on Croatia incorporates the feedback received from Marija Šiša Hrlić (State Intellectual Property Office) during the checking round with the national competent institutions.

<sup>835</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>836</sup> [http://www.dziv.hr/files/file/eng/zakon\\_autor\\_procisceni\\_ENG.pdf](http://www.dziv.hr/files/file/eng/zakon_autor_procisceni_ENG.pdf), available in Croatian at <https://zakon.hr/z/106/Zakon-o-autorskom-pravu-i-srodnim-pravima>

<sup>837</sup> <https://zakon.hr/z/98/Kazneni-zakon>

<sup>838</sup> <https://zakon.hr/z/174/Zakon-o-kaznenom-postupku>

<sup>839</sup> <https://zakon.hr/z/52/Prekr%C5%A1ajni-zakon>

<sup>840</sup> <https://zakon.hr/z/75/Zakon-o-obveznim-odnosima>

<sup>841</sup> <https://zakon.hr/z/134/Zakon-o-parni%C4%8Dnom-postupku>

<sup>842</sup> <https://zakon.hr/z/74/Ovr%C5%A1ni-zakon>

The overall legislative framework in the field of intellectual property rights in Croatia comprises the regulations governing individual areas of intellectual property rights and the regulations for competent bodies to act in proceedings for the protection of intellectual property rights against infringements.<sup>845</sup>

In Croatia, copyright infringement can be qualified as a criminal offence, a misdemeanour (i.e. small offence) and a civil law violation.

In particular, the Criminal Code regulates several criminal acts (infringement of authors' and performers' moral rights; illicit use of copyright work or performance; illicit use of objects of related rights). There are 18 misdemeanours (i.e. small offences) regulated in Articles 189 to 192b of the Copyright Act. Civil law infringements are regulated in the Copyright Act, and detailed provisions on damages and unjust enrichment are regulated in the Obligation Act. Procedural and common matters related to provisional measures are regulated in the Execution Act, while specific substantive provisions related to provisional measures are provided in the Copyright Act.

As far as copyright enforcement is concerned, the new draft of the "Copyright and Related Rights Law" follows the same path as the existing Copyright Act concerning civil law violations. It proposes regulation of 91 misdemeanours (every act of illegal use of copyright work or subject matter of related rights is regulated as a separate misdemeanour).

Copyright infringement is considered a criminal offence where the infringement of authors and performers moral rights occurs. In the case of infringement of integrity rights or in the case of illicit use of a copyright work, performance, phonogram, videogram (i.e. audiovisual recording), broadcast or in the case of circumvention of effective technological protection measures, the Criminal Code prescribes that those acts shall be considered as criminal offences, only if considerable material gain was obtained or considerable damage was caused. In all other situations, where copyright works or subject matter protected by related rights are used without authorisation, or where other moral rights are infringed, these shall be considered misdemeanours (i.e. small offences), regulated in the Copyright Act. The same pattern is also followed in the new draft of the Copyright and Related Rights Law.

#### 6.13.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

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<sup>845</sup> <http://www.stop-krivotvorinama-i-piratstvu.hr/en/intellectual-property-rights/legislative-framework/>



Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>844</sup> has not been transposed into the Croatian legal system (as at September 2021). The final draft of the Copyright and Related Rights Act had been approved by the government and was proposed to the Croatian Parliament for adoption (at the second reading). It transposes all the provisions of the DSM Directive. There are no special provisions concerning the online piracy of audiovisual sports content.

**Table 84. Regulatory framework**

EU directive	National law
DSM Directive	N/A
Intellectual Property Rights Enforcement Directive (IPRED)	Copyright and Related Rights Act ( <i>Zakon o autorskom pravu i srodnim pravima</i> , NN 167/03, 79/07, 80/11, 125/11, 141/13, 127/14, 62/17, 96/18)
Information Society (InfoSoc) Directive	Copyright and Related Rights Act ( <i>Zakon o autorskom pravu i srodnim pravima</i> , NN 167/03, 79/07, 80/11, 125/11, 141/13, 127/14, 62/17, 96/18)
E-Commerce Directive	Electronic Commerce Act ( <i>Zakon o elektroničkoj trgovini</i> , NN 173/03, 67/08, 36/09, 130/11, 30/14, 32/19)
Conditional Access Directive	Electronic Media Act ( <i>Zakon o elektroničkim medijima</i> , NN 153/09, 84/11, 94/13, 136/13)

Source: Croatian response to European Audiovisual Observatory standardised survey

## 6.13.2. National rules applicable to audiovisual sports content

### 6.13.2.1. Legal definition of “broadcaster” and “sports event organiser”

In Croatian law, there is no legal definition for “broadcaster”. However, Article 2, paragraph 1, subparagraph 9 of the Electronic Media Act<sup>845</sup> refers to a “television publisher” as a “television broadcast media service provider”.

As regards the definition of “sports event organiser”, Article 18, paragraph 1 of the Sports Act (*Zakon o sportu* NN 71/06, 150/08, 124/10, 124/11, 86/12, 94/13, 85/15, 19/16, 98/19, 47/20, 77/20),<sup>846</sup> refers to the organisation of a sports activity, among other things.

<sup>844</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

<sup>845</sup> The final draft of the new Electronic Media Act was also in the legislative procedure (as of September 2021).

<sup>846</sup> Available in Croatian at <https://zakon.hr/z/300/Zakon-o-sportu>.

Sports associations (as civil societies) and commercial entities (such as companies) may be organisers of sports events (as provided by Article 19, paragraph 3 of the Sports Act).

#### 6.13.2.2. Legal protection related to sports events

There is no specific legal protection for sports event organisers in Croatia. Sports event broadcasts may be protected as copyright works if the originality requirement is fulfilled. However, it is questionable whether the broadcasting of sports events shall be protected in its entirety as a copyright work. No specific case law has been detected related to this matter. Nevertheless, even in cases where copyright protection would not be given to the broadcast of the whole game or match or championship, some parts of it might be considered as fulfilling the originality criteria (e.g. filming, editing, camera angle) and receive copyright protection.

If the sports event is fixed in an audiovisual recording (i.e. videogram), this audiovisual recording shall be protected by the related rights of the producer, who does not need to fulfil the criteria of creativity or originality to acquire protection by related right. According to Article 138, paragraph 1 of the Copyright Act, the audiovisual recording's producer (technically also defined as a film producer), is a natural or legal person who takes the initiative, raises funds, organises and takes responsibility for the creation of the first fixation of the audiovisual recording. It shall be deemed that the audiovisual recording's producer is the person whose name or company name is regularly indicated on the audiovisual recording until proven to the contrary. If the organiser of a sports event makes the first fixation of that event on an audiovisual recording, it shall be considered to have a producer's right to it. According to Article 139, paragraph 1 of the Copyright Act, the producer of an audiovisual recording has the exclusive rights of reproduction, distribution, communication to the public and making available to the public of the audiovisual recording.

If the sports event is contained in a programme-carrying signal, it shall be protected as a broadcast – the object of the related right of a broadcaster in its programme-carrying signals (broadcast), as provided in Article 143 of the Copyright Act (the right to rebroadcast its broadcast by wire or wireless means; to fix the broadcast; to reproduce and to distribute it except the rental and lending right; to publicly communicate the broadcast if such communication is accessible to the public against payment of a ticket and to make the fixation of the broadcast available to the public). If the sports event organiser makes a broadcast of this event and communicates this broadcast online, he/she shall be considered a broadcaster. Nevertheless, this would be practically impossible under Croatian law since broadcasters under the Electronic Media Act need a licence issued by the Electronic Media Council and need to fulfil other requirements under the Electronic Media Act. Therefore, sports event organisers will usually have no broadcasting rights since they are not considered as broadcasters.

In the case of infringement of any of the related rights mentioned, only the person who can prove ownership of rights in the protected work or subject matter (producer of



the audiovisual recording or broadcaster) may claim protection under the Copyright Act. Similarly, under the Electronic Commerce Act, only a rightsholder is eligible to submit a notice to hosting providers. In the case of unauthorised online transmission of a sports event, the organiser of that event might be entitled to initiate legal action under the Copyright Act only if he/she can prove ownership of rights in the audiovisual recording. No other Croatian law is eligible to be invoked as the basis for protecting the online transmission of sports events.

### 6.13.2.3. Other specific rules applicable to sports events

There is no other specific legal protection for sports event organisers in national law. Furthermore, there are no specific rules about the use of sports content in social media.

**Table 85. Definitions of the main concepts concerning audiovisual sports events**

Concept	Existence of a definition	Relevant rights
Broadcaster	No	Related rights
Sports event organiser	No	Non-statutory rights

Source: Croatian response to European Audiovisual Observatory standardised survey

## 6.13.3. Remedies and sanctions applicable in the event of infringement

### 6.13.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

In the case of infringement of the rights set out in the Copyright Act, several legal measures and civil remedies may apply. If the audiovisual sports content in a particular case is protected as an audiovisual work by copyright (in part or in its entirety), as an audiovisual recording or by related rights as a broadcast, the legal remedies described below may be applicable. In the new draft of the Copyright and Related Rights Act, these provisions remain unchanged.

The right to protection shall entitle the copyright or related rightsholder to claim from the infringer desist from infringing acts (cessation of infringement, Article 177 of the Copyright Act); the remedy of damages (compensation for damages, Article 178 of the Copyright Act); the payment of compensation for unauthorised use (Article 179 of the Copyright Act); the payment of a penalty provided by law; the return of all the benefits



acquired unjustly by the infringement of rights (return of unjustly acquired benefits, Article 179 of the Copyright Act); the establishment of the committed infringement; and the publication of the judgment by which the court has even partially complied with the claim for the protection of copyright and related rights (Article 180 of the Copyright Act). In addition, there can be a claim for destruction, alteration or delivery of copies resulting from the infringement and objects employed in the commission of the infringement (Article 181 of the Copyright Act). If the rights have been infringed intentionally or by gross negligence, the rightsholder is also entitled to claim payment of up to double the amount of remuneration (penalty, Article 183 of the Copyright Act).

Provisional measures may also be claimed, at the request of an authorised party, when it is likely that a right has been infringed or that there is the likelihood of imminent infringement of such rights (Article 185 and 185a of the Copyright Act). These include the provisional seizure or exclusion from circulation of objects or means infringing such rights or serving for the infringement, or resulting from the infringement, or of objects and means that serve as evidence of the committed infringement; the prohibition of the continuation of acts which might infringe such rights, or are infringing such rights; the prohibition of a performance using the rights provided by the Copyright Act unlawfully. The court shall order a proposed provisional measure, if the other party, at the invitation of the court and at the request of the authorised party, fails to submit the relevant document or other proof showing that he/she is not infringing the rights in question. If there is a risk to the preservation of evidence on the infringement of rights or if there is a risk of irreparable damage or of ineffectiveness of the provisional measures, the court shall order such measures without prior notification of the other party (*inaudita altera parte*) (Article 185a (3) of the Copyright Act).

Article 187 of the Copyright Act (transposing Article 8 of IPRED) establishes a duty to provide information, according to which

*[a]ny person who, in the course of his/her business, learns of an infringement of a right under this Act, shall, at the request of a rightsholder or a collective rights management association, provide without delay any information and evidence related to the committed infringement, and in particular information regarding the origin of infringing copies and the manner of their putting on the market. Duty to provide information includes, in particular, informing of the name and address of manufacturers, suppliers or previous owners of such copies, and information on the amount of such reproduced, distributed, received or ordered unlawfully manufactured copies.*

This provision is drafted for acts which are undertaken on a commercial scale, as indicated in Recital 14 of IPRED. The sending of a pure link for entertainment shall not be considered relevant for this respect. This needs to be “in the course of the business”, as indicated in the Article.

In addition, misdemeanours (i.e. small offences) are always possible in any of the cases mentioned. Generally, misdemeanours are regulated in the Copyright Act, with



respect to almost every act of infringement of copyright or related rights. Rightsholders or collective management organisations are entitled to submit a misdemeanour report to the competent court, which shall decide on it. The remedies for misdemeanours are regularly monetary fines. Copyright is also protected by criminal law and, depending on the type and intensity of the breach, penalties are prescribed of up to three years in prison, according to Article 285 of the Criminal Code.

Concerning the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive), Article 175 of the Copyright Act provides that the circumvention of effective technological protection measures shall be considered as an infringement of copyright or the related rights in question. Therefore, all legal instruments and remedies available for the protection of copyright and related rights will also be available if effective technological protection measures attached to the object of these rights are circumvented. Providers of protected services are entitled to judicial protection, according to Article 51 of the Electronic Media Act on sanctions and remedies related to the legal protection of services based on, or consisting of, conditional access (although it does not define which type of protection might be applied). According to Article 51(2) of the Electronic Media Act, providers of protected services are entitled to start a legal procedure against the infringer, including to submit an action for damages in line with the general rules on damages. The damages are regulated by the Obligation Act.

All the measures from the Electronic Media Act might be directly invoked in cases concerning online piracy of audiovisual sports content if illicit devices were manufactured, used or installed for commercial purposes or promoted or even possessed for private purposes. Damages may be claimed.

Moreover, according to Article 176 of the Copyright Act concerning the protection of rights management information, as provided in Article 6 of the InfoSoc Directive, the infringement of rights management information will be considered as an infringement of the relevant rights to which object the information is attached. The consequences of infringement of rights management information are the same as in the case of an infringement of technological protection measures. This means that all remedies available for protection of the rights are also available to protect rights management information.

#### 6.13.3.2. National bodies with competences on copyright enforcement

Only the judicial bodies are competent in Croatia to address copyright infringements and there is no other national authority (e.g. administrative body) with competences in this field.





### 6.13.3.3. Codes of conduct and Memorandums of Understanding

There are currently no codes of conduct and/or Memorandums of Understanding relating to the enforcement of intellectual property rights and the fight against online piracy adopted by public and/or private entities in Croatia.<sup>847</sup>

### 6.13.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including online content-sharing platforms.

There are no statutory provisions on notice and take-down/stay-down procedures in Croatian law. Audiovisual content owners can protect their content by applying the general provisions of the Electronic Commerce Act. There are no specific rules provided in the Electronic Commerce Act for online piracy of any content. Article 14 of the E-Commerce Directive is transposed verbatim in Croatian law.

### 6.13.3.5. Removal and blocking orders

If the content is protected as a copyright work or the subject matter of a related right, i.e. as an audiovisual recording (or videogram), or broadcast, the rightholder, whose rights have been infringed in relation to it, may seek an injunction to stop the infringement, based on Article 177 of the Copyright Act (“Claim for cessation of infringement”).

According to Article 185 of the Copyright Act, a provisional measure might also be required. In this case, the applicant must prove that his/her right has been infringed or risks being infringed. The Civil Procedure Act and Execution Act shall apply for procedural matters. The Commercial Court shall be competent for such a case.<sup>848</sup>

In addition, according to Article 22.a of the Electronic Commerce Act, anyone who considers that a service provider is violating any of his/her rights (copyright, personal rights or any other right) may file a lawsuit with the competent court, and request an injunction (which may be a blocking injunction). There is no specific rule on dynamic injunctions or any other type of de-indexing injunctions and there is no case law either.

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<sup>847</sup> It is also worth mentioning the participation of Croatian stakeholders in the Memorandum of Understanding on online advertising and intellectual property. For further information, please see: <http://www.stop-krivotvorinama-i-piratstvu.hr/en/news-and-information/memorandum-of-understanding-on-online-advertising-and-intellectual-property,1175.html>

<sup>848</sup> Intellectual Property Rights cases in Croatia are in the competence of the commercial courts (four specialized courts situated in the centres of the main Croatian regions), and in the competence of the High Commercial Court, as a court of second instance.



Furthermore, according to Article 22.b of the Electronic Commerce Act, anyone who considers that a service provider is violating any of his/her rights may request a provisional measure from the competent court. By that measure, the court may order the service provider<sup>849</sup> to remove or disable access to data. In the lawsuit, the plaintiff needs to provide evidence that there has been a violation of his/her right. In the request for a provisional measure, specifically, the plaintiff should provide evidence that the infringement of his/her right is likely to happen or that the provisional measure is necessary to avoid irreparable infringement or damage.

Theoretically, the measures and procedures available in Croatian national law, as described before, are also available to address online piracy of live sports events. However, no cases of application of injunctions have been reported in relation to online infringement of audiovisual sports content in Croatia.

#### 6.13.3.6. Measures against end-users

The application of measures against end-users is rare. Only in the case of criminal offences must the service provider submit all data on the basis of which the detection or prosecution of perpetrators of criminal offences and the protection of third parties' rights can be undertaken. In this case, monetary fines may be imposed.

#### 6.13.3.7. Criminal sanctions

Copyright infringement is considered a criminal offence in the case of violation of the moral rights of authors or performers. Copyright infringement is also considered a criminal offence in the case of circumvention of effective technological protective measures and in the case of unauthorised reproduction, adaptation, distribution or communication to the public (including making available to the public) in any way, of copyright works or subject matter protected by related rights, if these acts were committed with the aim of acquiring significant commercial gain or causing significant harm.

In all other situations, where copyright works or subject matter protected by related rights are used without authorisation (or where other moral rights are infringed), this shall be considered as misdemeanours (i.e. small offences), regulated in the Copyright Act. There are no specific rules related to criminal proceedings for online piracy of audiovisual sports content in Croatia.

If a criminal offence was committed, the punishment might be imprisonment of up to one year (for the violation of moral rights) or up to three years (for other criminal

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<sup>849</sup> A service provider in this case is a person who provides services electronically, subject to payment, at the individual request of the user, in particular internet sales of goods and services, offering data on the internet, advertising via the internet, electronic search engines, and the ability to search for data and services transmitted electronically, mediate network access or store user data.

offences which include infringement of copyright or related rights). According to the general rules provided for in the Criminal Code, imprisonment of up to three years might be substituted by a monetary fine or community service.

In cases of misdemeanours, the punishment is always a monetary fine. A higher monetary fine shall punish misdemeanours which are committed with the aim of gaining a material profit. According to the general provisions of the Criminal Code and Misdemeanour Act, there is a possibility of seizure and destruction of infringing items, materials, and devices. In misdemeanour proceedings this shall be imposed at the request of the interested party and in the criminal proceedings *ex officio*.

To date, there has been no such case in relation to infringement of audiovisual sports content online.

**Table 86. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No, national copyright law is applied
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial bodies)	No
Entitlement to take legal action	Yes, based on evidence of the ownership of rights (for all rights owners both for copyright and related rights, there is a presumption of authorship or ownership)
Codes of conduct	No
Specific proceedings	No
Specific remedies	No

Source: Croatian response to European Audiovisual Observatory standardised survey

**Table 87. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	Yes
Removal and blocking injunctions	Yes
Dynamic and/or live blocking injunctions	No



<b>De-indexing injunctions</b>	No
<b>Damages and orders to cease and desist</b>	Yes
<b>Administrative offence and remedies</b>	No (only judicial remedies are available)
<b>Notice and take-down procedures</b>	No

Source: Croatian response to European Audiovisual Observatory standardised survey

## 6.13.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions in relation to online infringement of audiovisual sports content.

**Table 88. Relevant case law related to copyright infringement of audiovisual sports content**

<b>Content</b>	<b>Substance of the decision</b>	<b>Decisions</b>
<b>Communication to the public</b>	N/A	N/A
<b>Hosting providers' knowledge and awareness of illegal activity</b>	N/A	N/A
<b>Notice and take-downs</b>	N/A	N/A
<b>Measures against end-users</b>	N/A	N/A
<b>Criminal sanctions</b>	N/A	N/A

Source: Croatian response to European Audiovisual Observatory standardised survey

### 6.13.4.1. Communication to the public

In Croatia, there is no national case law related to the notion of communication to the public and copyright infringement of audiovisual sports content.

### 6.13.4.2. Online infringement of audiovisual sports content

No relevant national case law concerning online piracy of audiovisual sports content has been detected in Croatia. Furthermore, legal actions initiated by sports event organisers or by broadcasters have not been reported.

#### 6.13.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information. In Croatia, no cases dealing with such knowledge and awareness have been reported.

#### 6.13.4.4. Notice and take-down requirements

There is no specific statutory provision regarding notice and take-down procedures.

#### 6.13.4.5. Removal and blocking orders

Regarding the application of removal and blocking orders, there are few cases – and these are not publicly available – in the field of copyright and related rights where the court issued an order to remove the infringing content from the web page. The cases mentioned are not related to sports events.

#### 6.13.4.6. Measures against end-users ordered by the courts

The courts do not usually apply measures against end-users. Only in the case of a criminal offence, suspending or blocking internet access might be issued by the court as a security measure against the end-user, according to Articles 65 and 75 of the Criminal Code.

However, the suspension or blocking of access has not been used in cases of infringement of copyright and related rights.

#### 6.13.4.7. Compensation criteria adopted by the courts

There is no case law on compensation criteria applied by courts in order to compute damages to sports events broadcasters.

#### 6.13.4.8. Criminal sanctions ordered by the courts

There is no case law on criminal sanctions being applied to online piracy of audiovisual sports content to date.

### 6.13.5. Reports and studies

In Croatia, no reports or studies about online piracy of protected content have been detected, considering also the specific issue of illegal online transmissions of sports events. Furthermore, there are no studies describing the legal offer of online sports content in Croatia.

In addition, there are no associations of broadcasters or rightsholders that actively work to address the issue of online piracy of audiovisual sports content in Croatia.

### 6.13.6. Data compilation

This country report is based on data compiled by Romana Matanovac Vučković, Associate Professor and PhD at the University of Zagreb, School of Law, and Head of the Specialist University Interdisciplinary Study in Intellectual Property at the University of Zagreb.

### 6.13.7. Annex

**Table 89. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive 98/84/EC</b>	Electronic Media Act ( <i>Zakon o elektroničkim medijima</i> NN 153/09, 84/11, 94/13, 136/13) <sup>850</sup>
<b>Article 5 of Conditional Access Directive 98/84/EC – Infringing activities</b>	Article 51 (Similar provisions are in Article 59 of the new draft Law on Electronic Media, which is currently going through the parliamentary procedure)
<b>InfoSoc Directive 2001/29/EC</b>	Copyright and Related Rights Act (the Copyright Act)
<b>Article 6 of InfoSoc – Obligations as to technological measures</b>	Article 175 and Article 98 of the Copyright Act
<b>Article 8 of InfoSoc – Sanctions and remedies</b>	Articles 172 and 176 of the Copyright Act
<b>IPRED 2004/48/EC</b>	Copyright Act (a new draft of the Copyright Act is going to enter in force and all of these provisions will be transposed into a separate chapter on enforcement)
<b>Article 6 of IPRED – Evidence</b>	Article 185b of the Copyright Act
<b>Article 7 of IPRED – Measures for preserving evidence</b>	Article 185a of the Copyright Act

<sup>850</sup> Available in Croatian at <https://www.zakon.hr/z/196/Zakon-o-elektroni%C4%8Dkim-medijima>



EU directives	National law
<b>Article 8 of IPRED – Right of information</b>	Article 187 of the Copyright Act
<b>Article 9 of IPRED – Provisional and precautionary measures</b>	Article 185 of the Copyright Act
<b>Article 10 of IPRED – Corrective measures</b>	Article 181 of the Copyright Act
<b>Article 11 of IPRED – Injunctions</b>	Articles 172 and 177 of the Copyright Act Concerning the penalty payment as provided in Article 11 of the Directive, Article 263 of the Execution Act can be invoked.
<b>Article 12 of IPRED – Alternative measures</b>	Not transposed
<b>Article 13 of IPRED – Damages</b>	Articles 178, 179 and 183 of the Copyright Act and also provisions in the Obligation Act
<b>E-Commerce Directive 2000/31/EC</b>	Electronic Commerce Act ( <i>Zakon o elektroničkoj trgovini</i> , NN 173/03, 67/08, 36/09, 130/11, 30/14, 32/19) <sup>851</sup>
<b>Articles 12/13/14 and 15 E-Commerce Directive</b>	Articles 16, 17, 18, 21 respectively of the Electronic Commerce Act
<b>Article 16 E-Commerce Directive</b>	Article 21a paragraph 5 of the Electronic Commerce Act
<b>Article 17 E-Commerce Directive</b>	Article 22c of the Electronic Commerce Act
<b>Article 18 E-Commerce Directive</b>	Article 22a and b of the Electronic Commerce Act
<b>Article 19 E-Commerce Directive</b>	Articles 21a and 22 of the Electronic Commerce Act
<b>Article 20 E-Commerce Directive</b>	Articles 23 of the Electronic Commerce Act
<b>DSM Directive EU 2019/790</b>	Not transposed (as at September 2021)

<sup>851</sup> Available in Croatian at <https://www.zakon.hr/z/199/Zakon-o-elektroni%C4%8Dkoj-trgovini>

## 6.14. HU – Hungary – National legal summary<sup>852</sup>

### 6.14.1. General legal framework

#### 6.14.1.1. National legislation on copyright<sup>853</sup>

The Hungarian Copyright Act (HCA – Act No. 76 of 1999 on Copyright Law/1999. évi LXXVI. törvény a szerzői jogról)<sup>854</sup> is the national law that regulates the scope and the enforcement of copyright and related rights in Hungary.

The specific rules on liability exemptions of e-commerce service providers of the E-Commerce Directive are transposed into Hungarian law via the E-Commerce Act (ECA – Act No. 108 of 2001 on the specific questions of electronic commerce services and services connected to information society/2001. évi CVIII. törvény az elektronikus kereskedelmi szolgáltatások, valamint az információs társadalommal összefüggő szolgáltatások egyes kérdéseiről)<sup>855</sup> (in particular, the transposition concerned Articles 7-13 of the ECA).

In Hungary, copyright infringement is considered both a civil law violation and a criminal offence. In particular, civil law and copyright law liability apply in all cases related to the unauthorised use of protected subject matter (as well as contractual and tortious infringement), including infringements of moral rights. Protection is ensured also if no meaningful harm is caused (damages are not the sole remedies under Hungarian civil law). Criminal sanctions are provided in the Hungarian Criminal Code (HCC – Act No. 100 of 2012 on the Criminal Code/2012. évi C. törvény a Büntető Törvénykönyvről).<sup>856</sup>

#### 6.14.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

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<sup>852</sup> The country report on Hungary incorporates the feedback received from Adrienn Timár and Péter Lábódy (Intellectual Property Office) during the checking round with the national competent institutions.

<sup>853</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>854</sup> <https://net.jogtar.hu/jogszabaly?docid=99900076.tv>

<sup>855</sup> <http://www.lawandtranslation.com/szolgaltatasaink/jogszabalyok/2001evi108>

<sup>856</sup> In Hungarian: <https://net.jogtar.hu/jogszabaly?docid=a1200100.tv>.



Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (DSM Directive) has been transposed into Hungarian law through the implementation law adopted at the Hungarian Parliament on 28 April 2021 (HCA – Act No. 76 of 1999 on Copyright Law/1999. évi LXXVI. törvény a szerzői jogról), which entered into force on 7 June 2021.

**Table 90. Regulatory framework**

EU Directive	National law
<b>DSM Directive</b>	Law adopted by the Hungarian Parliament on 28 April 2021
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	Hungarian Copyright Act – HCA Act No. 76 of 1999 on Copyright Law/1999. évi LXXVI. törvény a szerzői jogról
<b>Information Society (InfoSoc) Directive</b>	Hungarian Copyright Act – HCA Act No. 76 of 1999 on Copyright Law/1999. évi LXXVI. törvény a szerzői jogról
<b>E-Commerce Directive</b>	E-Commerce Act – ECA Act No. 108 of 2001 on the specific questions of electronic commerce services and services connected to information society/2001. évi CVIII. törvény az elektronikus kereskedelmi szolgáltatások, valamint az információs társadalommal összefüggő szolgáltatások egyes kérdéseiről
<b>Conditional Access Directive</b>	Not transposed (with specific reference to Article 5 of the Directive)

Source: Hungarian response to European Audiovisual Observatory standardised survey

## 6.14.2. National rules applicable to audiovisual sports content

### 6.14.2.1. Legal definitions of “broadcaster” and “sports event organiser”

In Hungarian copyright law, there is no specific definition for “broadcaster”. However, related rights are granted by copyright law to organisations that are responsible for the provision of broadcasting services. Hungarian law only provides for the definition of “media service provider”.

Similarly, there is no definition per se for “sports event organiser” in the Act on Sports (2004. évi I. törvény a sportról). The law only states that sports events identified in a separate legal act can only be organised by sports associations/clubs or federations (Article 65(2)). “Sports associations” are defined by Article 17, and “federations” are defined by Article 19 of the Act on Sports (2004. évi I. törvény a sportról).

#### 6.14.2.2. Legal protection related to sports events

Sports event broadcasts can only benefit from copyright protection under the HCA if they demonstrate originality and fall within the concept of a “work”. For example, Expert Opinion No. 24/08 of the Hungarian Council of Copyright Experts<sup>857</sup> – which is not directly related to sports events – stated that certain parts of television formats (or programmes), under certain circumstances, may also fall within the concept of a copyrighted work (e.g. visual elements, graphics or the screenplay).

In any cases, the broadcasts of sports events, as broadcasts transmitted by broadcasters, are protected by the related (or “neighbouring”) rights of broadcasters. The broadcasters’ authorisation is required for the fixation, reproduction and communication to the public of their broadcast (but the programme formats may not be protected by their related right). Additionally, some elements of sports broadcasts – such as visual elements, music, video collages, etc. – may fall under copyright protection if they qualify as individual and original as required to be defined as a work under the HCA.

According to Article 80 of the HCA, unless otherwise provided in an Act, (1) the consent of the broadcaster shall be required for its programme to be a) broadcast or communicated to the public by other radio or television organisations or by entities engaged in communication by cable to the public; b) fixed; c) reproduced after fixation, under certain conditions; d) made available to the public by cable or any other means or in any other mode in such a way that members of the public can individually choose the place and time of access; (2) authorise its programmes to be communicated to the public in a room where the programme is accessible to the public for the payment of an entrance fee. Such uses shall be subject to the payment of remuneration.

In practice, sports event organisers enjoy broad licensing rights to monetise/merchandise their brands (e.g. sponsorship and image transfer contracts) and exercise their “property/ownership right” (*vagyoni értékű jog* – not an equivalent of *vagyoni jog*, that is, economic rights under the HCA). Expert Opinion No. 2000/31 of the Hungarian Council of Copyright Experts indicated that these two rights are distinct, and that the property rights under the Act on Sports are not equal to the economic rights under the HCA.

More specifically, Article 36.§(1) of the Act on Sport provides that “[t]he licensing of the broadcasting of sports activities and sports competition through television, radio and other electronic-digital technologies (e.g. the internet) shall constitute property rights”. These rights belong to sports organisations, on behalf of clubs and athletes, which are entitled to commercially exploit the media rights of competitions organised by them for a definite period of time and to enter into agreements for their exploitation on behalf

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<sup>857</sup> Upon request, the Hungarian Council of Copyright Experts provides opinions in judicial and extrajudicial procedures on issues and professional questions arising, mainly concerning the exercise of rights. These opinions are not binding.

of original rights owners.<sup>858</sup> On this basis, sports event organisers can sign deals with broadcasters over the broadcasting and making available to the public of the individual sports event or series/leagues of events. The legal basis for such exercise of rights of property value are Article 17(1)(b) for associations and Article 22(3) for federations, as regulated in the Act on Sports.

Broadcasters and sports event organisers are entitled to take legal action against illegal or unlawful uses. However, in line with Article 4 of the IPRED, only rightsholders, licensees, or collective rights management associations are entitled to take legal action against infringements of intellectual property rights (including infringements of the broadcasting or online transmission of sports events). As sports event organisers do not hold economic rights, but rather "property rights", the protection of the IPRED cannot be applied to them, unless they are also considered broadcasters, in which case they would be granted protection through the "general" related rights of broadcasters.<sup>859</sup>

#### 6.14.2.3. Other specific rules applicable to sports events

There are no other specific rules applicable to sports events in national law. No special rules exist for sports content in social media. Consequently, the general rules on making available to the public shall apply in this case.

**Table 91. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
<b>Broadcaster</b>	No	Related rights in the broadcast (or copyright as employer of the author if the programme falls under the definition of work).
<b>Sports event organiser</b>	No	"Property" rights (i.e. licensing the broadcasting of the competition they organise through television, radio and the internet)

*Source: Hungarian response to European Audiovisual Observatory standardised survey*

<sup>858</sup> According to Article 37.§1 of the Act on Sports, "Sports federations are entitled to stipulate in their regulations concerning the competition systems they invite and organise that they retain certain rights of property value of their members pursuant to Article 36 for utilisation for a fixed term. In this case, the sports federation shall conclude the sales contract with the user".

<sup>859</sup> See Article 80 of the HCA, op. cit.



### 6.14.3. Remedies and sanctions applicable in the event of infringement

#### 6.14.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

All sanctions and remedies provided by the HCA, the HCC or the ECA are applicable to online infringement of audiovisual sports content.

Under civil law claims, the rightsholder whose rights have been infringed may claim the declaration, by the court, of an infringement of rights having occurred; the termination of such infringement and an injunction requiring the infringer to stop the infringement; the publication of the judgment at the cost of the infringer; the restitution of unjust enrichment achieved through the infringement; the termination of the infringement and the restoration of the original state prior to the infringement on the part or at the cost of the infringer, as well as the destruction of the device or material exclusively or primarily used for the infringement or making it unsuitable therefor. Compensation for damages may also be claimed.<sup>860</sup>

In addition, provisional measures may be requested if the applicant proves ownership of the rights. The court shall take a decision on the imposition of provisional measures with particular diligence, or at least within 15 days from the filing of the request for such measures. The court may also order preliminary measures to preserve and secure evidence, in case the infringement is established.

Concerning the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive), Article 95 of the HCA stipulates that the consequences of copyright infringement shall apply to all acts – including the production and distribution of devices and the provision of services – which enable or facilitate an unlawful circumvention of effective technological measures designed to provide protection for the copyright and which have no particular aim or no major economic significance other than the mere circumvention of the technological measures. This provision shall be applicable only if the person performing the acts referred to knows, or has reasonable grounds to know, that the acts unlawfully enable or facilitate the circumvention of the effective technological measure designed to provide copyright protection. Furthermore, Article 96 of the HCA provides that this also includes the unauthorised removal or alteration of the rights management data as well as the unauthorised distribution, importation for distribution, broadcasting or communication to the public in a different manner of works from which the rights management data have

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<sup>860</sup> Hungarian civil law is based on the concept of actual damages (exact harms suffered by the rightsholder due to the unauthorised use of his/her protected subject matter shall be recovered). Neither punitive nor statutory damages are known or accepted under Hungarian law.

been removed or in which such data have been altered without authority, supposing that the person performing any of the acts referred to knows, or has reasonable grounds to know, that the acts unlawfully enable or facilitate the infringement of the copyright or that he/she induces others to commit such infringement. The HCC provides for special criminal sanctions in cases of breach of technical protection measures and misuse of rights management information (Articles 384-387 of the Criminal Code).<sup>861</sup>

#### 6.14.3.2. National bodies with competences on copyright enforcement

There is no general authority (e.g. administrative body) other than judicial bodies with specific competences to address copyright infringement in Hungary. There are no specialised intellectual property (IP) courts either. Regional courts with general jurisdiction have competence on copyright cases.<sup>862</sup>

In addition, a Council of Copyright Experts was founded in 1970, although its antecedent was founded back in the 19th century. The Council of Copyright Experts operates attached to the Hungarian Intellectual Property Office (HIPO), however, it is a professionally independent organ. The Council is competent to provide (non-binding) expert opinions either at the request of the courts (regarding any pending case), other government authorities or independent parties (regarding any kind of copyright matters). The Council is not allowed to decide on facts; it can only give theoretical and/or legal arguments, and bases its opinion solely on the facts provided by the petitioner.<sup>863</sup> It may also intervene at the request of the concerned parties as a mediation body if no agreement on remuneration and other terms and conditions of use is reached between the user and the rightholder, or between the users and their representative organisations and collective management organisations, to facilitate an agreement between the parties.

#### 6.14.3.3. Codes of conduct and Memorandums of Understanding

No code of conduct or Memorandum of Understanding or similar document has been detected in Hungary regarding the enforcement of intellectual property rights and the fight against piracy at national level.

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<sup>861</sup> In Hungarian: <https://net.jogtar.hu/jogszabaly?docid=a1200100.tv>.

<sup>862</sup> These courts are the Courts of Appeal, the one located at the “second instance”. The courts of appeal are in these cases the Regional Courts of Appeal (of which there are five in the country). The Supreme Court can only handle copyright cases in extraordinary appeals.

<sup>863</sup> The Council’s expert opinions are publicly available via <https://www.sztnh.gov.hu/hu/szakmai-oldalak/szerzoi-jog/szerzoi-jogi-foosztaly/szerzoi-jogi-szakertoi-testulet/az-szjszt>. Many expert opinions are kept secret at the request of any party. On the procedure of the Council, see Government Decree 156/1999 (XI.3.). ([http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=41825](http://njt.hu/cgi_bin/njt_doc.cgi?docid=41825)) (The decree is not available in an official English translation.).



#### 6.14.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

Hungarian law has transposed Articles 12 to 15 and Articles 16 to 20 of the E-Commerce Directive verbatim, with some “extras”. The HCA includes a fourth liability exemption regime for search engines (see Article 2(ld) and Article 11), and a detailed scheme for a functioning notice-and-take-down (NTD) procedure (Article 13). The application of these rules in cases concerning online piracy of audiovisual sports content requires that the content is protected by copyright law or trademark law. The ECA requires *expressis verbis* the use of the NTD procedure in copyright and trademark infringement cases. Such NTD procedures might be voluntarily applied by e-commerce service providers in other cases, e.g. libel. The ECA also allows for the conclusion of collaboration agreements between rightsholders and e-commerce service providers regarding the NTD procedure.<sup>864</sup>

In terms of procedure, within eight days after becoming aware of the illegal act, the rightsholder shall give notice to the service provider about the illegal act in a private document with full probative force. Within 12 hours following receipt of the notification, the service provider shall take the measures necessary for the removal of the content, or for disabling of access to it and shall concurrently inform in writing the recipient of the service affected within three working days; the service provider shall indicate the rightsholder and the rightsholder’s notice on the basis of which the content was taken down. The respective user, whose content was removed, can submit an objection fixed in a private document with full probative force or in an authentic instrument to the service provider within eight days of receipt of the notice against the removal of the contested content. Upon receipt of the objection, the service provider shall proceed without delay to restore access to the content in question and shall simultaneously inform the rightsholder about the restoration. If the rightsholder still wants to remove the contested content, he/she shall lodge a claim to the court within ten working days from the day of receipt of the notice, demanding that the infringement of rights be terminated and that the infringer be enjoined to cease any further infringement of rights, or he/she shall make a request for a payment warrant, or file criminal charges. The service provider shall take measures within 12 hours following receipt of the court’s decision for ordering provisional measures, to maintain the removal of the content or the disabling of access to it.<sup>865</sup>

#### 6.14.3.5. Removal and blocking orders

Concerning removal and blocking orders, the relevant procedure is described in Article 94/A of the HCA. These rules are backed by the general rules of the Code of Civil

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<sup>864</sup> The frequency of application of NTD rules in relevant case law is difficult to demonstrate in the absence of the full and systematic publication of court decisions.

<sup>865</sup> Section 13 of the ECA.



Procedure (Act No. 130 of 2016/2016. *évi CXXX. törvény a polgári perrendtartásról*), namely Articles 103-107.

In short, the plaintiff (rightsholder) shall initiate the procedure within six months after the infringement took place (objective requirement), but within a maximum of 60 days of the notice of the infringement (subjective requirement). The plaintiff can apply for ordinary and exceptional (special) remedies under Article 94/A (4).

The court shall decide on the request immediately or within a maximum of 15 days. The Court of Appeal shall decide on the appeal likewise without delay or within a maximum of 15 days. The court can repeal the injunction if the plaintiff fails to initiate the proceedings on the merits within 15 days of the disclosure of the order (the injunction).

#### 6.14.3.6. Measures against end-users

No specific rules exist with regard to end-users in the case of copyright infringement and the general procedure described in Article 94 HCA (see paragraph 1.1.3.5 above) applies.

In general, the Criminal Code allows for the prosecution of wilful copyright infringements of any subject matter (including related rights), if that infringement causes financial harm to the rightsholder (Article 385(1) of the HCC). Nevertheless, Article 385(5) provides that it is not a crime if the end-user reproduces or communicates to the public, as long as this activity is not aimed at increasing the user's income (this section was introduced to decriminalise end-user peer-to-peer (P2P) filesharing activities). This rule is not applicable if the harm caused by the user exceeds HUF 100 000 (approximately EUR 300).

Furthermore, with regard to the collection of data by private entities to identify the end-users committing violations, it is worth noting that Hungarian law does not allow the disclosure of personal data in civil infringement cases without a court order. If the rightsholder initiates proceedings against any intermediary who is aware of or in possession of any relevant data (including personal data) that might be useful to tackle copyright infringements, the court can order the disclosure of such data.

#### 6.14.3.7. Criminal sanctions

Criminal sanctions are applied if the copyright infringement is intentional and the user intends to gain or increase profit, and the harm caused exceeds the threshold of criminality (acts leading to less than HUF 100 000 in damages, approximately EUR 300, are treated as misdemeanours). General criminal law and criminal procedure shall also apply to all cases of copyright infringement.



**Table 92. National regulation applicable on audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No, national copyright law applies
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial bodies)	No, general courts are competent; (Hungarian Council of Copyright Experts to assist the courts)
Entitlement to take legal action	Yes (only rightsholders under the HCA)
Codes of conduct	No
Specific proceedings	No
Specific remedies	No

Source: Hungarian response to European Audiovisual Observatory standardised survey

**Table 93. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	No (all criminal copyright offences include gaining or increasing profit as a doctrinal prerequisite, however, the graveness of the sanction depends on the economic harm caused)
Removal and blocking injunctions	Yes
Dynamic and/or live blocking injunctions	Not mentioned in national law; never applied
De-indexing injunctions	Not mentioned in national law; never applied
Damages and orders to cease and desist	Yes
Administrative offence and remedies	No
Notice and take-down procedures	Yes

Source: Hungarian response to European Audiovisual Observatory standardised survey

#### 6.14.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public;



knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions, in relation to online infringement of audiovisual sports content.

**Table 94. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Content of the Decision	Decisions
Communication to the public	N/A	N/A
Hosting providers' knowledge and awareness of illegal activity	If the content is not described precisely, it is not mandatory to eliminate the material.  It is not mandatory to monitor content.	Budapest-Capital Regional Court: P.22.405/2013/9 P.21.195/2016/9 P.20.030/2018/10
Notice and take-downs	N/A	N/A
Measures against end-users	N/A	N/A
Criminal sanctions	N/A	N/A

Source: Hungarian response to European Audiovisual Observatory standardised survey

#### 6.14.4.1. Communication to the public

No court decision has been detected regarding the notion of communication to the public and copyright infringement of audiovisual sports content in Hungary.<sup>866</sup>

However, there is a single expert opinion in the field of “sport broadcasts”, which was issued under the effect of the former Act on Sports (Act No. 64 of 1996) and the former Copyright Act (Act No. 3 of 1969). In its Expert Opinion No. 31/2000, the Hungarian Council of Copyright Experts declared that broadcasting rights of sports events shall be granted to associations or federations as a “right of financial value”. Such a right is, however, not subject to copyright law, and therefore the remedies under the latter law shall not be applied to the (probable) infringement of such a “right of financial value”.<sup>867</sup> Although this expert opinion applies to former laws, its logic seems to be validly applicable to the existing sports and copyright laws.

#### 6.14.4.2. Online infringement of audiovisual sports content

No relevant national case law has been detected in Hungary concerning online infringements of audiovisual sports content.

<sup>866</sup> <https://eakta.birosag.hu/anonimizalt-hatarozatok> (please enter the reference number in the search bar).

<sup>867</sup> <https://www.sztnh.gov.hu/hu/file/41488/download?token=yQhHGf2r.>



#### 6.14.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

In compliance with the E-Commerce Act's rules on notice and take-down procedures, the complaining party shall expressly indicate the source (link) of the contested material. As long as the exact route to said content is not provided by the complainant, the service provider is not required to remove anything (Budapest-Capital Regional Court, P.22.405/2013/9).<sup>868</sup>

The case law also confirms that the burden of proof regarding the provision of the notice to the service provider rests on the complainant. As long as the notice is not properly provided to the service provider, no expeditious removal is required (Supreme Court, Pfv.IV.20.248/2015/9).<sup>869</sup> Elsewhere, the Budapest-Capital Regional Court concluded that the question of whether the service provider has exercised any control/moderation over the content hosted on its site shall be taken into consideration. As, however, intermediary service providers are not required to moderate content, the lack of moderation cannot be taken into consideration against the service provider (Budapest-Capital Regional Court, P.21.195/2016/9, and, to the same effect, Budapest-Capital Regional Court, P.20.030/2018/10).<sup>870</sup>

#### 6.14.4.4. Notice and take-down requirements

No case law was detected with respect to notice and take-down requirements for unauthorised sports programmes.

#### 6.14.4.5. Removal and blocking orders

No case law was detected concerning the issuing by national courts of removal or blocking orders in Hungary.

#### 6.14.4.6. Measures against end-users ordered by the courts

Similarly, there is no case law in Hungary related to the ordering of measures against end-users by national courts.

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<sup>868</sup> <https://ekta.birosag.hu/anonimizalt-hatarozatok>.

<sup>869</sup> Ibid.

<sup>870</sup> <https://ekta.birosag.hu/anonimizalt-hatarozatok>.



#### 6.14.4.7. Compensation criteria adopted by the courts

No case law has been detected in relation to the calculation of damages in relation to online piracy of sports events.

#### 6.14.4.8. Criminal sanctions ordered by the courts

No case law has been detected in Hungary with respect to the application of criminal sanctions to online infringement of audiovisual sports content.

As previously mentioned, although Article 385(1) of the Criminal Code allows for the prosecution of intentional copyright infringement if it causes financial harm to the rightsholder, Article 385(5) decriminalises end-user P2P file-sharing activities, by providing that it is not a crime if the end-user reproduces or communicates protected subject matter to the public, as long as this activity is not for profit (provided the harm caused by the user does not exceed HUF 100 000).

### 6.14.5. Reports and studies

Concerning reports and studies on online piracy of protected content, the key Hungarian agency tackling piracy and counterfeit activities (HENT – *Hamisítás Elleni Nemzeti Testület*/National Board Against Counterfeiting) publishes reports and studies on piracy activities.

The latest two documents on piracy, nevertheless, do not deal specifically with sports issues. In the 2017 report,<sup>871</sup> the expression “sport” is not even mentioned. Instead, the more recent 2020 report refers to sport in the context of e-sports.<sup>872</sup> No other official reports or studies are carried out independently by Hungarian authorities or organisations. The HENT regularly reports on European Union Intellectual Property Office (EUIPO) reports, although this is not directly related to the situation in Hungary. The latest report on piracy activities do not deal with sports either.<sup>873</sup>

Historic research by various researchers (including the present national reporter) analysed empirically the piracy behaviour of consumers related to the matches of the 2010 Football World Championships. The Hungarian language report focused mainly on the data collected from P2P file-sharing services and link-sharing platforms.<sup>874</sup> While the

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<sup>871</sup> [https://issuu.com/dv\\_publications/docs/2017\\_hent\\_kutatasi\\_jelentes\\_web](https://issuu.com/dv_publications/docs/2017_hent_kutatasi_jelentes_web).

<sup>872</sup> [https://drive.google.com/file/d/1nkX8OrK4CTDjgBcXqRLs\\_zlhmVr-nkMs/view](https://drive.google.com/file/d/1nkX8OrK4CTDjgBcXqRLs_zlhmVr-nkMs/view).

<sup>873</sup> <https://drive.google.com/file/d/1BLk5-l1BO-l6DgRKqedwHi9OmFEOouOh/view>.

<sup>874</sup> <https://www.scribd.com/doc/75640904/Empirikus-felmeres-a-2010-es-labdarugo-vilagbajnoksag-streaming-es-torrentoldalakon-valo-koveteser%C5%91l>.



report included a significant amount of useful data, it was never officially published. P2P filesharing is less relevant nowadays, compared to live streams of sports events. In addition, two to three times more sports channels are available lawfully in Hungary nowadays than in 2010. This research mainly focused on P2P, P2PTV and stream linking sites.

Concerning awareness raising campaigns (or rather “copyright literacy”, according to the terminology used in Hungary) in relation to online piracy, the Hungarian IP Office published a “*Jedlik-terv*” (Jedlik Plan), which aimed to develop Hungarian IP strategy for 2013-2016.<sup>875</sup> A section of the strategy was dedicated to raising IP awareness. However, almost no substantive actions were taken under the Jedlik Plan (to increase the frequency of awareness-raising projects, reports, campaigns, etc.) with regard to sports broadcast piracy. The Jedlik Plan has not been renewed or replaced by any other IP strategy since then.

In 2016-2017, the present national reporter initiated and executed a copyright literacy project. The “*Kottakalózok*” (Sheet Music Pirates) project intended to introduce the daily challenges of copyright law for a garage band. The project led to the creation of five episodes of a cartoon.<sup>876</sup> The research outcome was further elaborated by Péter Mezei and István Harkai in a scholarly paper in 2017.

#### 6.14.6. Data compilation

This country report is based on data compiled by Dr Péter Mezei, Dr habil, PhD at the University of Szeged.

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<sup>875</sup> <https://www.sztnh.gov.hu/hu/sztnh/kiadvanyok/a-szellemi-tulajdon-vedelmere-iranyulo-nemzeti-strategia-jedlik-terv>.

<sup>876</sup> <https://www.youtube.com/channel/UCBTHUUrFotu4wOzxyqfDEiA/videos>.



## 6.14.7. Annex

**Table 95. Overview of relevant transposition measures**

EU directive	National law
Conditional Access Directive 98/84/EC	N/A
InfoSoc Directive 2001/29/EC	Act No. 76 of 1999 on Copyright Law/1999. évi LXXVI. törvény a szerzői jogról (HCA) <sup>877</sup>
Article 6 InfoSoc – Obligations as to technological measures	HCA – Article 95 and 95/A implemented Article 6 InfoSoc on the obligations as to technical protection measures
Article 8 InfoSoc – Sanctions and remedies	Article 94 HCA complies with Article 8 and provides all the requirements of necessary and appropriate enforcement mechanisms, including injunctions against infringers and intermediaries.
IPRED 2004/48/EC	Act No. 76 of 1999 on Copyright Law/1999. évi LXXVI. törvény a szerzői jogról; (HCA) – in particular Article 94-94A of the HCA are the key rules that transpose the enforcement toolkit of the EU <i>acquis</i> .
Articles 6 to 13 IPRED	The transposition of these rules is verbatim.
E- Commerce Directive 2000/31/EC	E-Commerce Act (ECA – Act No. 108 of 2001 on the specific questions of electronic commerce services and services connected to the information society/2001. évi CVIII. törvény az elektronikus kereskedelmi szolgáltatások, valamint az információs társadalommal összefüggő szolgáltatások egyes kérdéseiről) <sup>878</sup>
Articles 12-15 E-Commerce Directive – Liability of intermediary service providers / Articles 16-20: implementation	Articles 7–13 ECA. The implementation of these rules is clearly verbatim, with some addenda.
DSM Directive EU 2019/790	Adoption of implementation law in the Hungarian Parliament on 28 April 2021. Act No. 76 of 1999 on Copyright Law/1999. évi LXXVI. törvény a szerzői jogról (HCA)

<sup>877</sup> <https://net.jogtar.hu/jogszabaly?docid=99900076.tv>.

<sup>878</sup> <http://www.lawandtranslation.com/szolgáltatasaink/jogszabalyok/2001evi108>.

## 6.15.IE - Ireland – National legal summary<sup>879</sup>

### 6.15.1. General legal framework

#### 6.15.1.1. National legislation on copyright<sup>880</sup>

In Ireland, the Copyright and Related Rights Act 2000 (“2000 Act”) provides the general rules on the scope and the enforcement of copyright and related rights.<sup>881</sup>

The 2000 Act has been amended by the following primary laws: the Copyright and Related Rights (Amendment) Act 2004;<sup>882</sup> the Copyright and Related Rights (Amendment) Act 2007;<sup>883</sup> the Copyright and Other Intellectual Property Law Provisions Act 2019.<sup>884</sup>

Moreover, the 2000 Act has been also amended by statutory instruments (secondary legislation) including: the European Communities (Copyright and Related Rights) Regulations 2004;<sup>885</sup> the European Communities (Enforcement of Intellectual Property Rights) Regulations 2006;<sup>886</sup> the European Union (Copyright and Related Rights) Regulations 2012;<sup>887</sup> the European Union (Term of Protection of Copyright and Certain Related Rights) (Directive 2011/77/EU) Regulations 2013;<sup>888</sup> the European Union (Certain

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<sup>879</sup> It was not possible to receive feedback on the country report concerning Ireland during the checking round with the national competent institutions.

<sup>880</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>881</sup> Copyright and Related Rights Act 2000 (“2000 Act”)  
<http://www.irishstatutebook.ie/eli/2000/act/28/enacted/en/html>; <https://enterprise.gov.ie/en/What-We-Do/Innovation-Research-Development/Intellectual-Property/Copyright/Copyright-Legislation/Unofficial-Consolidated-Copyright-Legislation/>.

<sup>882</sup> Copyright and Related Rights (Amendment) Act 2004  
<http://www.irishstatutebook.ie/eli/2004/act/18/enacted/en/html>.

<sup>883</sup> Copyright and Related Rights (Amendment) Act 2007  
<http://www.irishstatutebook.ie/eli/2007/act/39/enacted/en/html>.

<sup>884</sup> Copyright and Other Intellectual Property Law Provisions Act 2019  
<http://www.irishstatutebook.ie/eli/2019/act/19/enacted/en/html>.

<sup>885</sup> European Communities (Copyright and Related Rights) Regulations 2004  
<http://www.irishstatutebook.ie/eli/2004/si/16/made/en/print>.

<sup>886</sup> European Communities (Enforcement of Intellectual Property Rights) Regulations 2006  
<http://www.irishstatutebook.ie/eli/2006/si/360/made/en/print>.

<sup>887</sup> European Union (Copyright and Related Rights) Regulations 2012  
<http://www.irishstatutebook.ie/eli/2012/si/59/made/en/print>.

<sup>888</sup> the European Union (Term of Protection of Copyright and Certain Related Rights) (Directive 2011/77/EU) Regulations 2013 <http://www.irishstatutebook.ie/eli/2013/si/411/made/en/print>.



Permitted Uses of Orphan Works) Regulations 2014;<sup>889</sup> the European Union (Collective Rights Management) (Directive 2014/26/EU) Regulations 2016.<sup>890</sup>

In Ireland, copyright infringement is generally considered a civil infringement, but it is also considered, in a number of cases, a criminal offense, typically where there is a commercial motive (i.e. where the infringer is acting for profit) or prejudice to the rightsholder. The main provision on copyright infringement as a criminal offense is Section 140(1) of the 2000 Act, which focuses on infringement in relation to “sale” and “rental”, or possession “in the course of a business, trade or profession” and excludes imports for “private and domestic use”, as follows:

*“(1) A person who, without the consent of the copyright owner:*  
*(a) makes for sale, rental or loan,*  
*(b) sells, rents or lends, or offers or exposes for sale, rental or loan,*  
*(c) imports into the State, otherwise than for his or her private and domestic use,*  
*(d) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or*  
*(e) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the owner of the copyright,*  
*a copy of a work which is, and which he or she knows or has reason to believe is, an infringing copy of the work, shall be guilty of an offence”.*

Section 140(2) of the 2000 Act similarly provides that private lending is not generally an offence, stating that “*loan*” means a loan for reward and in particular does not include a loan to a family member or friend for private and domestic use.”

The maximum penalty for violation of Section 140(1) is a fine of up to EUR 130 000 and/or imprisonment for a term of up to 5 years [Section 140(7)].

There is no provision in Irish copyright law allowing the imposition of administrative fines.

#### 6.15.1.2. Transposition of EU directives

This section aims at highlighting the transposition of EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

The Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (DSM Directive) has not been transposed (as at May 2021).<sup>891</sup>

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<sup>889</sup> the European Union (Certain Permitted Uses of Orphan Works) Regulations 2014  
<http://www.irishstatutebook.ie/eli/2014/si/490/made/en/print>

<sup>890</sup>the European Union (Collective Rights Management) (Directive 2014/26/EU) Regulations 2016  
<http://www.irishstatutebook.ie/eli/2016/si/156/made/en/print>



**Table 96. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	N/A - No draft text has yet been published.
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	European Communities (Enforcement of Intellectual Property Rights) Regulations 2006 <sup>892</sup>
<b>InfoSoc Directive</b>	Copyright and Related Rights Act 2000 <sup>893</sup> European Communities (Copyright and Related Rights) Regulations 2004 <sup>894</sup> European Union (Copyright and Related Rights) Regulations 2012 <sup>895</sup>
<b>E-Commerce Directive</b>	European Communities Regulations 2003 <sup>896</sup>
<b>Conditional Access Directive</b>	European Communities (Conditional Access) Regulations, 2000 <sup>897</sup>

Source: Irish response to European Audiovisual Observatory standardised survey

## 6.15.2. National rules applicable to audiovisual sports content

### 6.15.2.1. Legal definitions of “broadcaster” and “sports event organiser”

In Ireland, a definition of “broadcaster” is provided in Section 2 of the Broadcasting Act 2009,<sup>898</sup> as follows:

*a person who supplies a compilation of programme material for the purpose of its being transmitted, relayed or distributed as a broadcasting service (whether that person transmits, relays or distributes that material as such a service or not).*

<sup>891</sup> Consultation documents are available on the website of the Department of Business, Enterprise and Innovation: Copyright Consultations, General Notice on consultation on the transposition of Directive (EU) 2019/790, <https://enterprise.gov.ie/en/What-We-Do/Innovation-Research-Development/Intellectual-Property/Copyright/Copyright-consultations/>.

<sup>892</sup> European Communities (Enforcement of Intellectual Property Rights) Regulations 2006: <http://www.irishstatutebook.ie/eli/2006/si/360/made/en/print>.

<sup>893</sup> Copyright and Related Rights Act 2000: <http://www.irishstatutebook.ie/eli/2000/act/28/enacted/en/html>.

<sup>894</sup> European Communities (Copyright and Related Rights) Regulations 2004: <http://www.irishstatutebook.ie/eli/2004/si/16/made/en/print>.

<sup>895</sup> European Union (Copyright and Related Rights) Regulations 2012: <http://www.irishstatutebook.ie/eli/2012/si/59/made/en/print>.

<sup>896</sup> European Communities Regulations 2003: <http://www.irishstatutebook.ie/eli/2003/si/68/made/en/print>.

<sup>897</sup> European Communities (Conditional Access) Regulations, 2000: <http://www.irishstatutebook.ie/eli/2000/si/357/made/en/print>.

<sup>898</sup> Broadcasting Act 2009, <http://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/html>.





The “broadcasting service” is in turn defined by Section 2, as:

*a service which comprises a compilation of programme material of any description and which is transmitted, relayed or distributed by means of an electronic communications network, directly or indirectly for simultaneous or near-simultaneous reception by the general public, whether that material is received or not and where the programmes are provided in a pre-scheduled and linear order, but does not include:*

- a) a service provided in a non-linear manner where each user of the service chooses a programme from a catalogue of programmes; or*
- b) other audio and audiovisual services provided by the way of the internet.*

Regarding the definition of sports events organisers, Part 11 of the Broadcasting Act 2009<sup>899</sup> deals with the free-to-air television coverage of major events as provided for by Article 14 of the Audiovisual Media Services Directive (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). Section 160 of this law defines “event” as an event of interest in the European Union or in a Member State, organised by an event organiser, who is legally entitled to sell the broadcasting rights to the event and includes the whole event or a part of it. The same provision defines the “sports event organiser” as “*the person who is legally entitled to sell the rights to the event*”.

There is no other legal definition of sports events organisers relevant to copyright law in Ireland.

#### 6.15.2.2. Legal protection related to sports events

Irish law does not provide specific legal protection for sports event organisers. The ownership of audiovisual recordings of sports events and of sports broadcasts is regulated by the general law of copyright, subject to contractual arrangements between the parties. Irish law does not specifically provide for a “house right”, but it is open to sports organisers or venues to impose contractual restrictions on ticketholders as part of the terms of admission to an event. These may include restrictions on recording an event. There is no Irish caselaw specifically on this issue but in principle such restrictions would be enforceable against the ticketholder in accordance with the general law of contract.<sup>900</sup>

The persons entitled to take legal action will depend on the exact nature of the transmission, the infringement, and the legal remedy sought. In general, however, the broadcaster will be entitled to take an action for infringement as the owner of the

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<sup>899</sup> <http://www.irishstatutebook.ie/eli/2009/act/18/section/160/enacted/en/html#part11>

<sup>900</sup> Compare *Sports and General Press Agency Ltd v 'Our Dogs' Publishing Ltd* [1917] KB 125.

copyright in the broadcast itself [Section 21(c) of the 2000 Act]<sup>901</sup> and the owner(s) of copyright in the recording (and the overlaid graphics and other artistic works within that footage) will similarly be entitled to take an action for infringement.

Exclusive licensees of the recording may also bring an action for infringement [Section 136 (3) of the 2000 Act].<sup>902</sup> Sports events organisers and sport leagues organisers are not as such entitled to take legal action unless they are also the copyright owners.

### 6.15.2.3. Other specific rules applicable to sports events

There are no other specific rules applicable to sports events in Irish law. There is no specific rules about the use of sports content in social media either.

**Table 97. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
<b>Broadcaster</b>	Yes	Copyright as regulated by general law, unless the contractual clauses apply
<b>Sports event organiser</b>	Yes	Non-statutory rights (no direct entitlement to take legal action regarding the audiovisual sports content, unless they are also rightsholders).

Source: Irish response to European Audiovisual Observatory standardised survey

## 6.15.3. Remedies and sanctions applicable in the event of infringement

### 6.15.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

The sanctions, remedies and injunctions available in Irish law are governed by a wide range of common law rules, equitable rules and statutory rules, to the extent that the leading textbook describe them as “a curious amalgam of self-help remedies, civil

<sup>901</sup> According to Section 21 of the 2000 Act, “(...) ‘author’ means the person who creates a work and includes, c) in the case of a broadcast, the person making the broadcast, or in the case of a broadcast which relays another broadcast by reception and immediate retransmission, without alteration, the person making that other broadcast”, <http://www.irishstatutebook.ie/eli/2000/act/28/section/21/enacted/en/html#sec21>.

<sup>902</sup> <http://www.irishstatutebook.ie/eli/2000/act/28/section/136/enacted/en/html>.



enforcement procedures and reliefs, and criminal and customs law.”<sup>903</sup> In the context of online piracy, the most important of these are damages, account of profits, information/evidence orders, injunctive relief and criminal sanctions.

Regarding damages (Section 128 of the 2000 Act), the court has a wide discretion in relation to the award of damages for infringement, including compensatory, aggravated, and exemplary damages.

With regards to the account of profits, Section 127(2) of the 2000 Act permits a copyright owner to seek an account of profits made by the infringer. This allows a plaintiff to seek to have the infringer disgorge any profits made as a result of the infringement, whether or not the plaintiff can show that it has suffered a loss.

In terms of information/evidence orders, Irish law permits the grant of *Anton Piller* orders,<sup>904</sup> which allow rightsholders to enter and search premises and seize evidence of infringement, in circumstances where an infringer may seek to destroy evidence, such as for example in *Microsoft v. Brightpoint Ireland Ltd*<sup>905</sup> (order granted to seize evidence of alleged copyright infringement by defendant firm).<sup>906</sup> Irish law also permits the grant of *Norwich Pharmacal* orders<sup>907</sup> requiring intermediaries to disclose information regarding the identity of infringers notwithstanding that the intermediary is entirely blameless, such as for example in *EMI Records (Ireland) Ltd. v. Eircom*<sup>908</sup> (order granted requiring ISP to disclose identity of internet users uploading music).<sup>909</sup>

Regarding injunctive reliefs, Irish law allows the grant of injunctions against infringers on either an interim (*ex parte*), interlocutory, or perpetual (final) basis. An interim injunction is typically sought without any notice to the other party as a matter of extreme urgency and will be granted only for a short period before an *inter partes* hearing can take place. An interlocutory injunction may be granted after an *inter partes* hearing on affidavit and will generally last until a full hearing on the merits takes place. In practice,

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<sup>903</sup> Robert Clark, Shane Smyth, and Niamh Hall, *Intellectual Property Law in Ireland* (Dublin: Bloomsbury Academic, 2016), 471.

<sup>904</sup> The order is named after the 1975 English case of *Anton Piller KG v Manufacturing Processes Limited*, dealing with the theft of trade secrets, *Anton Piller KG v Manufacturing Processes Ltd & Ors* [1975] EWCA Civ 12, [1976] 1 All ER 779 (8 December 1975). It is a court order that provides the right to search premises and seize evidence without prior warning. This is intended to prevent the destruction of relevant evidence, particularly in cases of alleged trademark, copyright or patent infringements.

<sup>905</sup> <https://www.bailii.org/ie/cases/IEHC/2000/194.html>.

<sup>906</sup> [2001] 1 ILRM 540.

<sup>907</sup> A *Norwich Pharmacal* order is a court order for the disclosure of documents or information that is available in the UK and Ireland. It is granted against a third party which has been innocently mixed up in wrongdoing, forcing the disclosure of documents or information. By identifying individuals the documents and information sought are disclosed in order to assist the applicant for such an order in bringing legal proceedings against individuals who are believed to have wronged the applicant. A *Norwich Pharmacal* order was first granted in 1974 by the House of Lords in *Norwich Pharmacal Co. v Customs and Excise Commissioners*, [a case concerning the alleged violation of a patent by unknown importers of the chemical subject to the patent.

<sup>908</sup> <https://www.bailii.org/ie/cases/IEHC/2005/H233.html>.

<sup>909</sup> [2005] 4 IR 148.



the outcome of the application for the interlocutory injunction will often resolve the whole matter in relation to intellectual property cases. In addition, Section 40(5A) of the 2000 Act allows injunctions to be granted against intermediaries such as ISPs, which has led to an extensive Irish jurisprudence on internet blocking, live blocking, and graduated response.

Finally, criminal sanctions are provided in the law in cases of large scale or commercial infringement (see further details in section 6.15.3.7. of this country).

All the provisions regarding the blocking orders, interim and Interlocutory injunctions, final injunctive relief, damages in lieu of other remedies, assessment of damages and corrective measures - as partly transposed from the IPRED - may be directly applied in cases concerning online piracy of audiovisual sports content.

Concerning the protection of technological measures and rights management information (Art. 6-7 of the InfoSoc Directive), the 2000 Act provides for sanctions and remedies in relation to “protection-defeating devices”, defined in Section 2(1) to include “any device, function or product, or component incorporated into a device, function or product, the primary purpose or effect of which is to avoid, bypass, remove, deactivate or otherwise circumvent, without authority, any rights protection measure”. Following the adoption of Directive 2001/29/EC, that definition was extended by Regulation 2 of the European Communities (Copyright and Related Rights) Regulations 2004<sup>910</sup> to add any device, etc. “which is promoted, advertised or marketed for the purpose of circumvention of any rights protection measure, or which has only a limited commercially significant purpose or use other than to circumvent any rights protection measure”.

The European Communities (Conditional Access) Regulations, 2000, which has given effect in Irish law to the Directive 98/84/EC on Conditional Access, allows the provider of a protected service to bring a civil action (for damages and/or an injunction) against a person engaged in an infringing activity (Regulation 7).

Furthermore, Regulation 3(1) creates criminal offences in relation to illicit devices, providing that a person, who for (a) commercial purposes (i) manufactures, imports, distributes, sells, rents or possesses, or (ii) installs, maintains or replaces, illicit devices or (b) uses commercial communications (including all forms of advertising, direct marketing, sponsorship, sales promotion and public relations) to promote illicit devices, is guilty of an offence. Such an offence carries a maximum penalty of a class C fine and/or imprisonment for up to 12 months (Regulation 6). In addition, where a person is convicted of such an offence the court may order the forfeiture of “any illicit device connected with the infringing activity the subject of the conviction” (Regulation 4(1)).

Under the European Communities (Conditional Access) Regulation 2000, both the criminal offences under Regulation 3 and the civil remedies (damages and injunctions)

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<sup>910</sup> Regulation 2 of the European Communities (Copyright and Related Rights) Regulations 2004, <http://www.irishstatutebook.ie/eli/2004/si/16/made/en/print>.

under Regulation 7 may be invoked in relation to online piracy of audiovisual sports content.

#### 6.15.3.2. National bodies with competences on copyright enforcement

In Ireland, there is no national authority with competences on infringements of copyright.

To the extent that copyright infringements and related matters constitute criminal offences, they may be investigated and prosecuted in the same way as any other offence by the national police (*Garda Síochána*) and the prosecuting authority (Director of Public Prosecutions).

#### 6.15.3.3. Codes of conduct and Memorandums of Understanding

There is no national code of conduct nor Memoranda of Understanding relating to the enforcement of intellectual property rights and the fight against online piracy adopted either by public and/or private entities.

#### 6.15.3.4. Notice and take-down procedures

Notice and take-down can be applied whenever infringing content is uploaded to a website, including content-sharing platform.

Section 40, subsections (3) and (4) of the 2000 Act provides for notice and take-down (NTD) measures in relation to hosting, as follows:

*(3) Subject to subsection (4), the provision of facilities for enabling the making available to the public of copies of a work shall not of itself constitute an act of making available to the public of copies of the work.*

*(4) Without prejudice to subsection (3), where a person who provides facilities referred to in that subsection is notified by the owner of the copyright in the work concerned that those facilities are being used to infringe the copyright in that work and that person fails to remove that infringing material as soon as practicable thereafter that person shall also be liable for the infringement.*

There are no statutory procedural rules regarding the steps to be followed by rightsholders. Section 40 (5) of the 2000 Act allows the Minister to make regulations prescribing the form of the notice to be given under Section 40(4). However, no such regulations have been made to date.



#### 6.15.3.5. Removal and blocking orders

Blocking injunctions have been available in Irish law since the European Union (Copyright and Related Rights) Regulations 2012 that amended the 2000 Act by inserting sections allowing the owners of copyright and related rights to seek injunctions against intermediaries. In relation to copyright infringement, the relevant provision is Section 40(5A) which provides as follows:

*(a) The owner of the copyright in a work may, in respect of that work, apply to the High Court for an injunction against an intermediary to whom paragraph 3 of Article 8 of 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 applies.*

*(b) In considering an application for an injunction under this subsection, the court shall have due regard to the rights of any person likely to be affected by virtue of the grant of any such injunction and the court shall give such directions (including, where appropriate, a direction requiring a person be notified of the application) as the court considers appropriate in all of the circumstances.*

Section 40(5A) has led to an extensive Irish jurisprudence on internet blocking, live blocking and dynamic blocking injunctions.<sup>911</sup> As regards de-indexing injunctions, there is no Irish case law on such injunctions against search engines at the behest of copyright holders. Furthermore, according to the legal doctrine, there would be in principle no legal basis related to such measure. In fact, search engines themselves do not incur secondary liability for merely facilitating a wrongdoer, nor do they authorise infringement by merely indexing neutrally. As legal doctrine has noted, “*it seems clear that a search engine which does no more than index generalist content, without emphasising specific infringing materials, will not authorise infringement by those who happen to access infringing content*”.<sup>912</sup> Similarly, injunctions against search engines are most likely not within the scope of Section 40(5A) of the 2000 Act insofar as a search engine is, unlike an ISP or a hosting provider, not an intermediary “*whose services are used by a third party to infringe a copyright or related right*” within the meaning of Article 8(3) of the InfoSoc Directive.<sup>913</sup> Consequently, as the Court of Appeal noted in *Sony Music Entertainment (Ireland) v UPC Communications Ireland Ltd*,<sup>914</sup> the position is that “*as a matter of general law the courts have no jurisdiction to grant an injunction against a defendant who has committed no cognisable legal wrong or where such a wrong is not threatened*”.<sup>915</sup>

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<sup>911</sup> See further details about case law in Section 6.15.4. of this country report.

<sup>912</sup> Jaani Riordan, *The Liability of Internet Intermediaries* (Oxford University Press, 2016), 147.

<sup>913</sup> Jaani Riordan, ‘Website Blocking Injunctions under United Kingdom and European Law’, in *Secondary Liability of Internet Service Providers*, ed. Graeme B. Dinwoodie (Cham; New York: Springer, 2017), 311.

<sup>914</sup> [2016] IECA 231, <https://www.bailii.org/ie/cases/IECA/2016/CA231.html>.

<sup>915</sup> Para. 17, *per* Hogan J.

Concerning the proceeding to obtain an injunction, the application for injunctions is invariably brought in the High Court against the infringer and/or the intermediary against whom a blocking order or takedown order is sought. Where an order is sought against an intermediary alone it is not necessary to also join the infringer to the proceedings. In the context of online piracy, applications for injunctions are usually made on the basis of affidavit evidence rather than oral testimony. In all cases a plaintiff must be able to demonstrate that damages would not be an adequate remedy. This will include situations where damages would be difficult to quantify, or where an infringing party is judgment proof (i.e. does not have funds) or is otherwise unlikely to satisfy an award of damages.

An injunction is a discretionary remedy and the court may take into account the plaintiff's conduct and refuse relief based on the general equitable grounds such as unclean hands (misconduct on the part of a plaintiff) or unreasonable delay so as to prejudice the other party.<sup>916</sup> In case an interlocutory injunction is sought, the plaintiff must meet a high standard to show that it is appropriate to issue an injunction before a full hearing of the matter. The test in Irish law for granting an interlocutory injunction is set out by the Supreme Court in *Merck Sharp & Dohme Corp v Clonmel Healthcare Ltd*,<sup>917</sup> as follows:

- 1) First the court should consider whether, if the plaintiff succeeded at the trial, a permanent injunction might be granted. If not, then it is extremely unlikely that an interlocutory injunction seeking the same relief upon ending the trial could be granted;
- 2) The court should then consider if it has been established that there is a fair question to be tried, which may also involve a consideration of whether the case will go to the trial;
- 3) if there is a fair issue to be tried (and it probably will be tried), the court should consider how best the matter should be arranged pending the trial, which involves a consideration of the balance of convenience and the balance of justice;
- 4) the most important element in that balance is, in most cases, the question of adequacy of damages. (5) In commercial cases where breach of contract is claimed, courts should be robustly sceptical of a claim that damages are not an adequate remedy;
- (6) Nevertheless, difficulty in assessing damages may be a factor which can be taken account of and lead to the grant of an interlocutory injunction, particularly where the difficulty in calculation and assessment makes it more likely that any damages awarded will not be a precise and perfect remedy. In such cases, it may

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<sup>916</sup> Lennon v. Ganly [1981] ILRM 84.

<sup>917</sup> [2019] IESC 65.



be just and convenient to grant an interlocutory injunction, even though damages are an available remedy at trial.

(7) While the adequacy of damages is the most important component of any assessment of the balance of convenience or balance of justice, a number of other factors may come into play and may properly be considered and weighed in the balance in considering how matters are to be held most fairly pending a trial, and recognising the possibility that there may be no trial;

(8) While a structured approach facilitates analysis and, if necessary, review, any application should be approached with a recognition of the essential flexibility of the remedy and the fundamental objective in seeking to minimise injustice, in circumstances where the legal rights of the parties have yet to be determined.”<sup>918</sup>

In the context of online piracy, the leading authority regarding the grant of injunctions against intermediaries is the decision of the Court of Appeal in *Sony Music Entertainment (Ireland) and Ors. v UPC Communications Ireland Ltd.*<sup>919</sup> In that case, Hogan J. summarised the criteria for an injunction against an ISP as requiring a plaintiff to establish that such an injunction is

*(i) necessary;*

*(ii) that the costs involved were not excessive or disproportionate and that the order itself should not be unduly complicated;*

*(iii) that the cost sharing proposals were fair and reasonable;*

*(iv) that the order respected the fundamental rights of the parties affected, including internet users and (v) that the duration of the proposed injunction and the provisions for review were reasonable.*<sup>920</sup>

There is no Irish legislation regarding who should bear the cost of implementing an injunction issued against an intermediary. However, in *Sony Music Entertainment (Ireland) and Ors. v UPC Communications Ireland Ltd*, the Court of Appeal held that the courts have discretion regarding this issue and may allocate the capital expenditure and running costs as between the parties – subject to the proviso that the allocation of costs must comply with the requirements of the InfoSoc Directive and the IPRED that orders should be “fair and equitable”, not “unnecessarily complicated or costly” and “proportionate”, and must also strike a fair balance with the freedom of the intermediary to conduct on a business as articulated by the CJEU in *Scarlet Extended and SABAM v. Netlog*. The Court of Appeal therefore upheld an order requiring the ISP to establish a system costing approximately EUR 800 000 - EUR 960 000 in capital costs with operational costs of approximately EUR

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<sup>918</sup> [Merck Sharp & Dohme Corp v Clonmel Healthcare Ltd.](#), para. 64.

<sup>919</sup> [2016] IECA 231.

<sup>920</sup> Para. 65.





125 000 – EUR 150 000 per annum, with the plaintiffs bearing only 20% of the capital costs and none of the operating costs.

#### 6.15.3.6. Measures against end-users

The Irish courts have interpreted Section 40(5A) of the 2000 Act to permit the grant of an injunction requiring an ISP to put in place a “graduated response” mechanism in relation to allegations of filesharing by users. In *Sony Music Entertainment (Ireland) and Ors. v UPC Communications Ireland Ltd.*<sup>921</sup> the Court of Appeal upheld an order which required the defendant ISP to send “cease and desist” letters to subscribers on receiving notices from the plaintiff alleging copyright infringement in relation to music owned by them, and to notify the plaintiffs when a subscriber had incurred three such letters. Notably, however, this scheme does not oblige the ISP to disconnect the user after these “three strikes”; rather the order envisages that the plaintiffs may then seek a *Norwich Pharmacal* order to identify the user in question. The Court of Appeal acknowledged in its judgment that requiring the ISP to disconnect users following the “three strikes” would breach the rights of users under Article 1 (3a) of the Framework Directive<sup>922</sup>.

That scheme proceeded for some time but no subscriber ever had their internet connection suspended as a result,<sup>923</sup> and it is not clear whether that scheme is still in effect in its original form. Given the comments of the Court of Appeal in *Sony Music Entertainment (Ireland) and Ors. v UPC Communications Ireland Ltd.*<sup>924</sup> it seems clear that were Eircom to disconnect subscribers following three accusations then that would breach the rights of subscribers to fair procedures prior to disconnection under Article 1(3a) of the Framework Directive.<sup>925</sup>

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<sup>921</sup> [2016] IECA 231.

<sup>922</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services.

<sup>923</sup> Ann O’Loughlin, ‘Sky Agrees to Cease and Desist Protocol to Tackle Music Piracy’, Irish Examiner, 8 October 2018, <https://www.irishexaminer.com/business/arid-30874415.html>; Weckler, Adrian, ‘Three Strikes – but Not out of Eircom Yet’, Independent.ie, 12 March 2014, <https://www.independent.ie/business/technology/three-strikes-but-not-out-of-eircom-yet-30088323.html>.

<sup>924</sup> [2016] IECA 231.

<sup>925</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and



In theory a court could order that an end-user have internet access suspended or blocked following a finding of copyright infringement on their part; however this does not seem ever to have been done.

It is also worth noting that Irish law provides for an offence targeting individual viewers under Section 371 of the 2000 Act, according to which

*A person who receives a broadcast or cable programme to which rights protection measures have been applied, knowing or having reason to believe that it is being received unlawfully with the intent to avoid payment of any charge applied by the rightsowner for the reception of that broadcast or cable programme shall be guilty of an offence.*

However, in practice, the courts have not prosecuted any such case either.

#### 6.15.3.7. Criminal sanctions

There is a wide-ranging set of offences created by Section 140(1) of the 2000 Act in relation to large scale or commercial infringement, as follows:

*(1) A person who, without the consent of the copyright owner:*

- (a) makes for sale, rental or loan,*
- (b) sells, rents or lends, or offers or exposes for sale, rental or loan,*
- (c) imports into the State, otherwise than for his or her private and domestic use,*
- (d) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or*
- (e) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the owner of the copyright, a copy of a work which is, and which he or she knows or has reason to believe is, an infringing copy of the work, shall be guilty of an offence”*

Section 140(4) the 2000 Act creates offences in relation to protection-defeating devices, which may be relevant to some online infringements. That subsection provides as follows:

*A person who:*

- (a) (i) makes,*
- (ii) sells, rents or lends, or offers or exposes for sale, rental or loan,*
- (iii) imports into the State, or*
- (iv) has in his or her possession, custody or control, a protection-defeating device, knowing or having reason to believe that it has been or is to be used to circumvent rights protection measures, or*
- (b) provides information, or offers or performs any service, intended to enable or assist a person to circumvent rights protection measures, shall be guilty of an offence.*

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associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services.

Regarding criminal proceedings, the only cases concerning online piracy of audiovisual sports content appear to be a relatively small number of investigations, arrests and prosecutions in relation to the sale of “dodgy boxes” – i.e. set top boxes preloaded with software to permit access to material including sports streams – with only one conviction reported in January 2021. These cases - on a media research - have been judged on the basis of Section 140 of the 2000 Act and Section 92 of the Trademarks Act 1996 (fraudulent use of trademarks in relation to goods). If tried on indictment (before the Circuit Court with a jury) these offences carry a maximum penalty of up to five years’ imprisonment and a fine of up to (approximately) EUR 127 000 (under Section 140) or up to EUR 222 000 (under Section 92).

However, in practice, these cases generally seem to be prosecuted summarily (before a judge sitting alone in the District Court) where the maximum penalty for each offence is a class C fine (currently EUR 2 500) and a term of imprisonment of up to twelve months (under Section 140) or six months (under Section 92).

**Table 98. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No
Specific rules on the use of sports content in social media	No
Competent bodies (other than judicial bodies)	No
Entitlement to take legal action	Yes for rightsholders
Codes of Conduct	No
Specific proceeding	No
Specific remedies	No

Source: Irish response to European Audiovisual Observatory standardised survey

**Table 99. National remedies in case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	Yes
Removal and blocking injunctions	Yes



<b>Dynamic and/or live blocking injunctions</b>	Yes
<b>De-indexing injunctions</b>	No
<b>Damages and order to cease and desist</b>	Yes
<b>Administrative offense and remedies</b>	No
<b>Notice and take-down procedure</b>	Yes

Source: Irish response to European Audiovisual Observatory standardised survey

## 6.15.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following contents: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures towards end-users and criminal sanction, in relation to online infringement of audiovisual sports content.

**Table 100. Relevant case law related to copyright infringement of audiovisual sports content**

<b>Content</b>	<b>Substance of the decision</b>	<b>Decisions</b>
<b>Communication to the public</b>	N/A	N/A
<b>Hosting providers' knowledge and awareness of illegal activity</b>	N/A	N/A
<b>Notice and take-down</b>	N/A	N/A
<b>Measures against end-users</b>	The no-application of measures towards end-users	Court of Appeal in Sony Music Entertainment (Ireland) and Ors. v UPC Communications Ireland Ltd:
<b>Criminal sanctions</b>	N/A	N/A

Source: Irish response to European Audiovisual Observatory standardised survey

### 6.15.4.1. Communication to the public

The only reported cases related to the notion of communication to the public and copyright infringement of audiovisual sports content concern live blocking injunctions granted to UEFA and the Premier League (see section 6.15.4.2. below).



#### 6.15.4.2. Online infringement of audiovisual sports content

In 2019, the Irish courts issued the first live blocking injunction in *The Football Association Premier League Limited v Eircom Limited & Ors*.<sup>926</sup> In that case, the English Premier League sought an injunction requiring ISPs to block access to IP addresses identified by the plaintiff in real-time and notified to the ISPs while matches take place.<sup>927</sup> The High Court (Haughton J.) granted an injunction to this effect, citing the judgment of Arnold J. in *The Football Association Premier League Ltd v. British Telecommunications Plc & Ors*<sup>928</sup> and holding that such an injunction was necessary to prevent illegal live streaming, did not impose an undue burden on the ISPs, and adequately safeguarded the fundamental rights of non-parties who were given the opportunity to apply to court

In a later judgment in the same proceedings this injunction was extended to the 2020/21 football season, with Barniville J. noting that:

*[The] evidence clearly demonstrates that the 2019 Order has been effective and should, therefore, in my view, be extended both for the balance of the 2019/2020 season and for the 2020/2021 season. I refer to the evidence, including confidential matters put before the court, without objection from the Defendants, in this regard which demonstrates the following:*

- (a) Increased compliance rate (that is the proportion of unauthorised live streams which have been disrupted or removed within 60 minutes of detection);*
- (b) According to consumer research carried out by Populus Limited, a decline in the percentage of football pirates who use an ISD (that is, an illegal streaming device) to access pirated football content; and*
- (c) That there is no evidence of ‘over-blocking’.”*

A similar live blocking injunction has also been granted to *UEFA in Union Des Associations Europeennes De Football v. Eircom Ltd. & Ors*.<sup>929</sup>

#### 6.15.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal

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<sup>926</sup> [2019] IEHC 615, <https://www.bailii.org/ie/cases/IEHC/2019/H615.html>.

<sup>927</sup> The Premier League could seek the injunction based on section 40(5A) of the Copyright and Related Act 2000, i.e. as a rightsholder (e.g. as a result of contractual arrangements between the federation and broadcasters/producer of the audiovisual content). For further details on the judgment, please see at: <https://www.bailii.org/ie/cases/IEHC/2019/H615.html>

<sup>928</sup> [2017] EWHC 480 (Ch).

<sup>929</sup> *Union Des Associations Europeennes De Football v. Eircom Ltd. & Ors.*: <https://www.bailii.org/ie/cases/IEHC/2020/2020IEHC488.html>.



activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

There does not appear to be any Irish judgment which considers this point in detail. The limited Irish case law touching on Article 14 to date (see e.g. *Mulvaney & Ors v- The Sporting Exchange Ltd trading as Betfair*<sup>930</sup>; *Muwema v. Facebook Ireland Ltd.*<sup>931</sup>) is largely made up of interlocutory rather than final judgments and does not specifically address the type of notice or information which would be required to put the ISP on notice so as to remove the hosting immunity<sup>932</sup>.

#### 6.15.4.4. Notice and take-down requirements

There is no statutory regulation on this aspect and no case law considering it.

#### 6.15.4.5. Removal and blocking orders

To date, blocking orders in relation to sports content have only been addressed to ISPs.<sup>933</sup> The first injunction was issued in *EMI Records Ireland Ltd & Ors v UPC Communications Ireland Ltd & Ors*.<sup>934</sup> In that case an order was granted requiring the defendant ISPs to block access to The Pirate Bay website and related domain names, IP addresses and URLs. It was also a dynamic injunction in that it permitted the plaintiffs in the future to notify other related domain names, IP addresses and URLs to the defendants to be blocked. The cost of implementing blocking was ordered to be borne by the defendant ISPs.

On the other hand, as earlier mentioned, there does not appear to be any legal basis for the grant of an order against search engines (de-indexing injunctions).

#### 6.15.4.6. Measures against end-users ordered by the courts

In 2009 a settlement was reached between the music industry and the incumbent ISP (Eircom) by which that ISP agreed to implement a scheme under which it would suspend internet access of subscribers against whom three accusations of filesharing were made.<sup>935</sup> However, no subscriber ever had their internet connection suspended as a result.

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<sup>930</sup> [2009] IEHC 133, <https://www.bailii.org/ie/cases/IEHC/2009/H133.html>.

<sup>931</sup> [2016] IEHC 519, <https://www.bailii.org/ie/cases/IEHC/2016/H519.html>.

<sup>932</sup> *Mulvaney & Ors v- The Sporting Exchange Ltd trading as Betfair*:  
<https://www.bailii.org/ie/cases/IEHC/2009/H133.html>;

*Muwema v. Facebook Ireland Ltd*: <https://www.bailii.org/ie/cases/IEHC/2016/H519.html>.

<sup>933</sup> See also § 1.1.4.2. above, in “*The Football Association Premier League Limited v Eircom Limited & Ors*” and in “*UEFA in Union Des Associations Europeennes De Football v. Eircom Ltd. & Ors*”.

<sup>934</sup> [2013] IEHC 274, <https://www.bailii.org/ie/cases/IEHC/2013/H274.html>.

<sup>935</sup> *EMI Records (Ireland) Limited & ors v The Data Protection Commissioner* [2013] IESC 34,



In a case, the court claims that the subscribers' disconnection following three accusations then would breach the rights of subscribers to fair procedures prior to disconnection under Article 1(3a) of the Framework Directive<sup>936</sup>.

Furthermore, as concerning the collection of personal data by private entities to identify end-users committing violations, the jurisdiction to issue *Norwich Pharmacal* orders against ISPs to identify end-users was confirmed in *EMI Records (Ireland) Ltd. v. Eircom*, in which the court relied on the following factors to justify the grant of an order identifying alleged filesharers:

- There is prima facie demonstration of a wrongful activity, namely infringement of the Plaintiff's copyright;
- There is no other way, apart from the application, by which the Plaintiffs can acquire information concerning the identities sought;
- Whether the right to confidentiality arises by statute or by contract or at common law, it cannot be relied on by a wrongdoer or a person against whom there is evidence of wrongdoing to protect his or her identity; and
- The order which will require disclosure will be given on the basis of an undertaking that the information disclosed will be used solely for the purpose of seeking redress in respect of infringement of copyright in sound recordings.

#### 6.15.4.7. Compensation criteria adopted by the courts

There are no cases on compensation criteria adopted by courts concerning online piracy of audio-visual sport content. For what concerns damages, ordinary rules for breach of copyright would apply.

#### 6.15.4.8. Criminal sanctions ordered by the courts

There are no cases related to the application of criminal sanctions to online piracy of audiovisual sports content.

There have been only one conviction (as of January 2021) regarding the sale of preloaded set top boxes which were described by the prosecution as giving full access to "Sky television content including all of their premium channels".

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<https://www.bailii.org/ie/cases/IESC/2013/S34.html>. It should be noted that the operation of that scheme was challenged, ultimately unsuccessfully, by the Data Protection Commissioner.

<sup>936</sup> Court of Appeal in *Sony Music Entertainment (Ireland) and Ors. v UPC Communications Ireland Ltd*: <https://www.bailii.org/ie/cases/IECA/2016/CA231.html>.



### 6.15.5. Reports and studies

From a non-legal perspective, there are no reports or studies about online piracy protected content in Ireland, also in relation to the specific issue of illegal online transmissions of sports event. There are no reliable sources that deals with the technologies and business models used for the illegal streaming of sports content. There are no studies describing the legal offer of online sports content either.

There have been awareness campaigns related to online piracy. From the early 2000s the Irish Recorded Music Association (IRMA) has run a series of campaigns in relation to music piracy, implementing a scheme involving warning notices being sent to uploaders. More recently, the police warnings about fraud and safety in relation to infringing streaming boxes have been detected; for example, in 2018 the arrest of individuals in relation to these devices was accompanied by warnings that

*[P]irating services were very damaging to the legitimate companies providing the same product ... [C]onsumers are funding criminality and depriving genuine industry of legitimate revenue ... [They] are providing their payment details to unknown individuals and leaving themselves open to being the victims of fraud and/or data theft ... The security around these devices and illegal streaming platforms exposes customers and leaves their home systems vulnerable.*

Finally, there are two associations that have led Irish litigation, actively working to address the issue of online piracy of audiovisual sports content:

- English Premier League (Football Association Premier League Limited)
- UEFA (Union Des Associations Europeennes De Football).

Both associations have secured injunctions against online piracy.

### 6.15.6. Data compilation

This country report is based on data compiled by Dr. TJ McIntyre, Associate Professor In the Sutherland School of Law, University College Dublin. He is also a chairperson of the civil liberties group Digital Rights Ireland and specialist adjudicator for the .ie Alternative Dispute Resolution Policy.



## 6.15.7. Annex

**Table 101. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive 98/84/EC</b>	European Communities (Conditional Access) Regulations, 2000
<b>Art. 5 of Directive 98/84/EC - Infringing activities</b>	Regulation 3 and 7
<b>InfoSoc Directive 2001/29/EC</b>	Copyright and Related Rights Act 2000 European Communities (Copyright and Related Rights) Regulations 2004 European Union (Copyright and Related Rights) Regulations 2012
<b>Art. 6 ISD - Obligations as to technological measures</b>	Section 2 (1) of the Copyright and Related Rights Act 2000 Regulation 2 of the European Communities (Copyright and Related Rights) Regulations 2004
<b>Art. 8 par. 1 and par. 2 ISD - Sanctions and remedies.</b>	Already provided
<b>Art. 8 par. 3 ISD - Sanctions and remedies</b>	Section 40 (5A)
<b>IPRED 2004/48/EC</b>	European Communities (Enforcement of Intellectual Property Rights) Regulations 2006
<b>Art. 10 of the IPRED - Corrective measures</b>	Regulation 4
<b>E-Commerce Directive 2000/31/EC</b>	European Communities (Directive 2000/31/EC) Regulations 2003
<b>Art 20 ECD – Sanctions</b>	Regulation 7(2) (offences of failure to provide information by relevant service providers); Regulation 8(2) (offences in relation to commercial communications); Regulation 9(2) (offences in relation to unsolicited commercial communications); Regulation 13(5) (offences in relation to conclusion of contracts by electronic means); Regulation 14(5) (offences in relation to placing of orders pursuant to contracts concluded by electronic means).
<b>DSM Directive EU 2019/790</b>	The DSM Directive has not been transposed (as of May 2021).



## 6.16.IT – Italy – National legal summary<sup>937</sup>

### 6.16.1. General legal framework

#### 6.16.1.1. National legislation on copyright<sup>938</sup>

In Italy, Law No. 633 of 22 April 1941, (*Legge sul diritto d'autore* – the Copyright Law)<sup>939</sup> is the general act that regulates the scope and the enforcement of copyright and related rights.

In Italy, copyright infringement is considered both as a criminal offence and a civil law violation. In particular, the Copyright Law provides – in Article 171 et seq. – a set of rules that specifically criminalise copyright infringement.

In general, the Copyright Law does not require the pursuit of profit for copyright infringement to constitute a criminal offence, although some criminal provisions require as a mandatory condition that the offender acted for profit.

Under Italian law, copyright infringement may also constitute an administrative violation.

#### 6.16.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>940</sup> has been transposed by Legislative Decree no. 177 of 8 November 2021, entered into force on 12 December 2021.<sup>941</sup>

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<sup>937</sup> The country report on Italy incorporates the feedback received from Vittorio Ragonese (Expert for European and international negotiations, Ministry of Culture) during the checking round with the national competent institutions.

<sup>938</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>939</sup> [http://www.interlex.it/testi/L41\\_633.htm](http://www.interlex.it/testi/L41_633.htm).

<sup>940</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.



**Table 102. Regulatory framework**

EU directive	National law
DSM Directive	Legislative Decree no. 177 of 8 November 2021.
Intellectual Property Rights Enforcement Directive (IPRED)	Decree No. 140 of 16 March 2006 <sup>942</sup>
Information Society (InfoSoc) Directive	Copyright Law <sup>943</sup>
E-Commerce Directive	Legislative Decree No. 70 of 9 April 2003 (E-Commerce Decree) <sup>944</sup>
Conditional Access Directive	Legislative Decree No. 373 of 15 November 2000 <sup>945</sup>

Source: Italian response to European Audiovisual Observatory standardised survey

## 6.16.2. National rules applicable to audiovisual sports content

### 6.16.2.1. Legal definitions of “broadcaster” and “sports event organiser”

Pursuant to Article 2, paragraph 1 (l) of Legislative Decree No. 177/2005 (Audiovisual Media Services (AVMS) Code) (*Testo unico della radiotelevisione*)<sup>946</sup> a “broadcaster” (*emittente*) is defined as a provider of linear audiovisual media services, other than an analogue television broadcaster or a radio broadcaster. This definition mirrors the definition of a “broadcaster” under Article 1, paragraph 1 (f) of the AVMS Directive, as amended, which refers to a media service provider of television broadcasts, i.e. an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule.

<sup>941</sup> *Attuazione della direttiva (UE) 2019/790 del Parlamento europeo e del Consiglio, del 17 aprile 2019, sul diritto d'autore e sui diritti connessi nel mercato unico digitale e che modifica le direttive 96/9/CE e 2001/29/CE. (21G00192)*, <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2021-11-08;177>.

<sup>942</sup> Legislative Decree No 140 of 16 March 2006 “Implementation of Directive 2004/48/EC on the enforcement of intellectual property rights” (the Copyright Law) (*Decreto Legislativo 16 marzo 2006, n.140 “Attuazione della direttiva 2004/48/CE sul rispetto dei diritti di proprietà intellettuale” (Legge sul diritto d'autore)* <https://www.camera.it/parlam/leggi/deleghe/testi/06140dl.htm>

<sup>943</sup> Copyright Law/*Legge sul diritto d'autore* [http://www.interlex.it/testi/l41\\_633.htm](http://www.interlex.it/testi/l41_633.htm)

<sup>944</sup> <https://www.camera.it/parlam/leggi/deleghe/03070dl.htm>.

<sup>945</sup> Legislative Decree no. 373 of November 15, 2000 <https://www.camera.it/parlam/leggi/deleghe/00373dl.htm>.

<sup>946</sup> <https://www.camera.it/parlam/leggi/deleghe/testi/05177dl.htm>.



On the other hand, pursuant to Article 2 of Legislative Decree No. of 9 January 2008 on the ownership and marketing of sports audiovisual rights and related distribution of resources<sup>947</sup> (*Disciplina della titolarità e della commercializzazione dei diritti audiovisivi sportivi e relativa ripartizione delle risorse*), the notion of “sports event organisers” refers to the sports club undertaking the responsibility and the corresponding obligations for the organisation of the event taking place in sports facilities at their disposal. According to Article 2 paragraph 1 (e) of the aforementioned Decree, the notion of “sports league organiser” includes the person to whom the organisation of a sports competition is assigned or delegated by the competent sports federation, recognised by the Italian National Olympic Committee.

Furthermore, a definition of “event” is provided by Article 2 of the Decree, which includes any sports event consisting of a single match played by two teams as part of a competition – in the manner and duration laid down by sports regulations – which is organised by the person or organisation who has sports facilities available to host the event. It is also specified that the event is intended to be open to the public.

#### 6.16.2.2. Legal protection related to sports events

The sports event itself is not protected as an object of copyright or related (or “neighbouring”) rights under Italian copyright law, as it is not considered as an intellectual creation.

According to Legislative Decree No. 9 of 9 January 2008 (the Melandri Decree) (*Decreto Legislativo 9 gennaio 2008, n. 9 – cd. Decreto Melandri*),<sup>948</sup> which was adopted in implementation of Law No. 106 of 19 July 2007,<sup>949</sup> the sports event organiser (i.e. the football club) and the sports competition organiser (i.e. the football league) shall be the joint holders of the audiovisual rights to the sports events of the competition and they generally authorise broadcasters to broadcast them, without directly broadcasting the same.

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<https://www.camera.it/parlam/leggi/deleghe/08009dl.htm#:~:text=%22Disciplina%20della%20titolarita'%20e%20della,e%20relativa%20ripartizione%20delle%20risorse%22&text=1..legge%2019%20luglio%202007%2C%20n.>

<sup>948</sup> The Melandri Decree is available here: <http://www.camera.it/parlam/leggi/deleghe/08009dl.htm>.

<sup>949</sup> Law No. 106 of 19 July 2007, “Delegation of powers to the Government for the revision of the discipline relating to the ownership and the market of the rights of transmission, communication and making available to the public, on radio and television and on other electronic communication networks, of the sports events of the professional team championships and tournaments and of the related sports events organised at national level.” (*Legge 19 luglio 2007, n. 106, “Delega al Governo per la revisione della disciplina relativa alla titolarità ed al mercato dei diritti di trasmissione, comunicazione e messa a disposizione al pubblico, in sede radiotelevisiva e su altre reti di comunicazione elettronica, degli eventi sportivi dei campionati e dei tornei professionistici a squadre e delle correlate manifestazioni sportive organizzate a livello nazionale.”* Available here: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2007:106>.



In particular, according to the Melandri Decree, the exercise of the audiovisual rights relating to the individual events of the competition shall be the responsibility of the sports competition organiser (Article 4.1). In practice, the sports competition organiser is granted the exclusive right of economic use of the moving images and will be responsible for offering the rights to all operators (broadcasters) on all possible platforms through various types of competitive procedures (tenders for the assignment of audiovisual rights).

The audiovisual production of the event is the responsibility of the event organiser, who, for these purposes, may either film the event directly or through a technical filming service, or make use of the media operators (broadcasters) to whom the audiovisual rights have been assigned. The competition organiser shall coordinate the audiovisual productions by determining in guidelines the production methods and the minimum technical, qualitative and editorial standards to be complied with by the event organiser. The event organiser makes available to the competition organiser the signal containing the images of the event, including the filming sources and the formats indicated in the minimum standards, without any remuneration or reimbursement of costs (Article 4.4).

If the event organiser does not intend to carry out the audiovisual production, it shall be carried out by the competition organiser, who may either carry out the filming directly or by means of a technical filming service or make use of the broadcasters who are assignees of the audiovisual rights (Article 4.5). The property of the filming, as a result of the audiovisual productions shall belong to the organiser of the event, without prejudice to the right of the organiser of the competition to make use of it for all the purposes referred to in the decree (Article 4.6.).

The person who produces the images of the events of the competition is obliged to make available to all assignees of audiovisual rights, under transparent and non-discriminatory conditions, and according to a tariff established by the competition organiser, access to the signal, together with the related technical services, without logos or spoken commentary and with background noise. The Authority for Communications Guarantees shall monitor the correct application of this provision (Article 4.7).

As far as the relevant audiovisual recording is concerned the general requirements provided by the Copyright Law shall apply pursuant to its Article 78-*quater*, to the extent compatible.<sup>950</sup> However, there is no specific case law on this matter.

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<sup>950</sup> Article 78-*quater* was introduced in the Copyright Law as per Legislative Decree No. 9 of 9 January 2008 on the regulation of the ownership and marketing of sports audiovisual rights and related allocation of resources (the Melandri Decree) (*Decreto Legislativo 9 gennaio 2008, n. 9 "Disciplina della titolarità e della commercializzazione dei diritti audiovisivi sportivi e relativa ripartizione delle risorse" (Decreto Melandri)*). Preceding slightly the Court of Justice of the European Union (CJEU) FAPL cases C-403/08 and C-429/08, the Melandri Decree established that the provisions laid down by the Copyright Law shall apply to the audiovisual

Rightsholders are entitled to take legal action in the case of infringement of broadcasting or online transmission of sports events. Broadcasters and sports events organisers, in their capacity as licensees, are also entitled to take legal action.

### 6.16.2.3. Other specific rules applicable to sports events

There is no other specific legal protection for sports event organisers in Italy. There are no specific rules about the use of sports content in social media in Italy.

**Table 103. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
Broadcaster	Yes	Related rights (and as set out in the licence)
Sports event organiser	Yes	Audiovisual rights

Source: Italian response to European Audiovisual Observatory standardised survey

## 6.16.3. Remedies and sanctions applicable in the event of infringement

### 6.16.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

The Copyright Law does not specifically address online piracy of audiovisual sports content. However, Article 78-*quater* provides expressly that audiovisual sports rights are subject to the provisions enshrined in the Copyright Law, where compatible. Accordingly, the sanctions, remedies and injunctions generally provided by the Copyright Law shall be applicable to copyright infringement related to audiovisual sports content.

Furthermore, Article 161 of the Copyright Law implemented Articles 6 and 7 of the IPRED regulating evidence and measures for preserving evidence, by conferring upon national courts the power to order the description, assessment, evaluation or seizure of the items which are deemed to constitute copyright infringements. In the most serious cases, courts can also order the confiscation of the revenues which are due to the author

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sports rights referred to in Law No. 106 of 19 July 2007 and the relevant implementation decrees, to the extent that they are compatible with them.

of the relevant item. On the other hand, Article 156-*ter* of the Copyright Law vests in courts the power to order the disclosure of information under the same circumstances and under the same restrictions as set by the aforesaid provision.

In addition, Article 156 provides courts with the power to issue against the alleged infringer or the intermediary whose services are used to commit the infringement an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to prevent the continuation or repetition of the alleged infringements of that right. Article 162-*bis* concerns the procedural aspects on the commencement of the proceedings on the merits and the consequences for the injunctions ordered on a provisional basis.

In addition, according to Article 163 paragraph 1, the rightsholder can request an interim measure preventing any activity, including those provided by intermediaries, which may constitute an infringement of his/her right of economic exploitation, in accordance with the rules of the Italian Code of Civil Procedure, regarding proceedings brought as a matter of urgency.

Concerning the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive), Article 171-*ter*, paragraph 1 (f)-*bis* of the Copyright Law establishes as a criminal offence the manufacture, importation, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which (i) have the main purpose or commercial use of circumventing effective technological measures regulated under Article 102-*quater*, or (ii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of the aforementioned measures.

Articles 174-*bis*, 174-*ter* and 174-*quater* introduce a set of administrative fines covering a variety of conducts. Moreover, Article 6 of Legislative Decree No. 373 of 15 November 2000 establishes an administrative fine of between EUR 5 000 and EUR 25 000 (plus an amount of EUR 50 to EUR 250 for each illegal device) for whoever is guilty of illegal activities. Regarding conditional access services, there is no specific provision concerning the online piracy of audiovisual sports content. Nevertheless, the penalties under Article 6 can be invoked in such cases.

The Copyright Law also provides for criminal penalties under Articles 171-*bis*, 171-*ter* and 171-*octies*. In particular, Article 171-*bis* provides that the unlawful reproduction of computer programs for profit or the importation, distribution, sale, possession for commercial or entrepreneurial purposes or rental of programmes contained on media not “marked” by the Italian Authors’ and Publishers’ Association (SIAE), shall be punished by imprisonment from six months to three years and a fine of between EUR 2 582 to EUR 15 493.

If the conduct is committed for non-personal use, Article 171-*octies* provides that punishment is imprisonment from six months to three years and a fine of between EUR 2 582 and EUR 15 493 for any person who, for the purpose of making a profit:



*unlawfully duplicates, reproduces, transmits or broadcasts in public by any process, in whole or in part, an original work intended for television, cinema, sale or rent, disks, tapes or similar supports or any other support containing phonograms or videograms of musical, cinematographic or similar audiovisual works or sequences of moving images;*

*unlawfully reproduces, transmits or broadcasts in public, by any process, works or parts of literary, dramatic, scientific or educational, musical or dramatic-musical, or multimedia works, even if included in collective or composite works or databases.*

#### 6.16.3.2. National bodies with competences on copyright enforcement

In Italy, the Italian Communications Authority (AGCOM) is the independent administrative authority which, among other things, is competent to monitor and address copyright infringements occurring via electronic communication services and audiovisual media services.

AGCOM adopted decision No. 680/13/CONS<sup>951</sup> establishing an administrative procedure for the public enforcement of copyright online, providing that AGCOM can order internet service providers (ISPs) (mere conduit providers in the case of massive infringements or infringing content hosted by servers located abroad; hosting providers in the case of mere removal) to remove content found to constitute copyright infringement or to disable access to websites or webpages hosting copyright infringing content. In the event of failure to comply with the aforementioned orders within the term established by the decision, AGCOM is entitled to impose administrative fines.

#### 6.16.3.3. Codes of conduct and Memorandums of Understanding

No code of conduct or Memorandum of Understanding related to the enforcement of intellectual property rights and the fight against online piracy was identified at the national level by public and/or private entities.

#### 6.16.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

As mentioned above, AGCOM adopted an ad-hoc regulation for online copyright enforcement. According to the regulation, rightsholders are entitled to file a complaint with AGCOM to report infringements concerning their copyrighted works.

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<sup>951</sup> <https://www.agcom.it/documents/10179/540163/Delibera+680-13-CONS/2fb37939-620c-410d-a23f-2150d505b103?version=1.2>.





When a complaint is filed, AGCOM can either dismiss the case or commence proceedings within 7 days. In the latter case, an initial communication is served to the service provider, the website/webpage owner and the uploader, if identified.

After such communication is sent, the service provider, the website/webpage owner or the uploader can remove the content on a voluntary basis (in which case AGCOM will dismiss the case after having received a formal communication of the removal) or reply to AGCOM by filing a defensive brief within five days of the date of receipt of the initial communication. In the latter scenario, AGCOM can dismiss the case or issue two types of orders vis-à-vis the relevant service provider within 35 days of receipt of the complaint.

The order issued by AGCOM can consist of either i) a selective removal order, which requires the relevant hosting provider to take down the item of content; or ii) an order requiring mere conduit providers to disable access to the relevant digital works in the case of massive infringements (if the relevant server is located in Italy) or to the relevant website (if the server is located abroad), resulting in automatic redirection to a webpage containing information provided by AGCOM. These orders must be complied with within three days.

#### 6.16.3.5. Removal and blocking orders

As there is no specific procedure in the case of online piracy of audiovisual sports content, the general remedies for copyright infringement apply, where compatible, pursuant to Article 78-*quater* of the Copyright Law.

In particular, Article 156 of the Copyright Law establishes that whoever is likely to suffer a prejudice deriving from the violation of a right to economic exploitation conferred upon him/her under the Copyright Law or the person who intends to bring to an end violations already occurred vis-à-vis both the author of the alleged infringement and the intermediaries whose services are used to commit the violation, can ask the competent court to issue an injunction assessing the existence of his/her right and prohibiting the continuation of the violation. The court can also impose a fine, which is due for any further violation occurring after the issuance of the injunction or for any delay in the enforcement of the aforesaid injunction. This provision does not prejudice the application of the provisions enshrined in the E-Commerce Decree (Legislative Decree No. 70/2003).<sup>952</sup>

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<sup>952</sup> Legislative Decree No. 70/20039 of April 2003, Implementation of Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (*Decreto legislativo 9 aprile 2003, n. 70, Attuazione della direttiva 2000/31/CE relativa a taluni aspetti giuridici dei servizi della società dell'informazione, in particolare il commercio elettronico, nel mercato interno*), <http://www.interlex.it/testi/dlg0370.htm>.

The same injunction can also be issued as interim measure pursuant to Article 163 of the Copyright Law.

In both scenarios, the injunction procedures are governed by the relevant provisions of the Italian Code of Civil Procedure.

It is worth noting that the Copyright Law does not specify what types of injunctions can be adopted. On this point, Italian courts have issued blocking injunctions and dynamic injunctions on the basis of both Article 156 and Article 163 of the Copyright Law. However, there are no judgments in which Italian courts have adopted live blocking orders so far. In any case, blocking injunctions can be adopted, including as interim measures, in relation also to online live sports events, on the basis of the general criteria provided by, respectively, Articles 156 and 163 of the Copyright Law.

#### 6.16.3.6. Measures against end-users

Italian courts have not applied measures against end-users.

#### 6.16.3.7. Criminal sanctions

From a criminal perspective, there is no specific legal framework in Italy applicable to criminal proceedings in cases of online piracy of audiovisual sports content.

Criminal proceedings for crimes exclusively related to piracy are subject to the ordinary rules provided by the Italian Code of Criminal Procedure.

In addition, there are no punitive damages under Italian law. Statutory damages apply, pursuant to Article 158, paragraph 2, of the Copyright Law. In particular, damages are generally awarded with a view to compensating both the expenses caused by the illegal conduct and the loss of profit deriving from the illegal conduct.

The amount of the damages is determined on the basis of the general criteria for compensation of damages provided by Articles 1223, 1226 and 1227 of the Italian Civil Code. As to the loss of profit, it must also be evaluated in light of the revenues generated through the illegal use of the copyrighted work.

**Table 104. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial bodies)	Yes



<b>Entitlement to take legal action</b>	Yes, rightsholders (and broadcasters and sports events organisers in their capacity as licensees)
<b>Codes of conduct</b>	No
<b>Specific proceedings</b>	No
<b>Specific remedies</b>	No

Source: Italian response to European Audiovisual Observatory standardised survey

**Table 105. National remedies in the case of copyright infringement**

<b>Typology</b>	<b>Description</b>
<b>Criminal prosecution and criminal sanctions</b>	Yes
<b>Differentiation of criminal sanctions based on acting for profit</b>	Yes
<b>Removal and blocking injunctions</b>	Yes
<b>Dynamic and/or live blocking injunctions</b>	Yes
<b>De-indexing injunctions</b>	Yes
<b>Damages and orders to cease and desist</b>	Yes
<b>Administrative offence and remedies</b>	Yes
<b>Notice and take-down procedures</b>	Yes

Source: Italian response to European Audiovisual Observatory standardised survey

## 6.16.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions, in relation to online infringement of audiovisual sports content.

**Table 106. Relevant case law related to copyright infringement of audiovisual sports content**

<b>Content</b>	<b>Substance of the decision</b>	<b>Decisions</b>
<b>Communication to the public</b>	The dissemination on a famous social platform of copyrighted audiovisual	Court of first instance of Rome, decision No. 3512 of 15 February



Content	Substance of the decision	Decisions
	content amounts to communication to the public (URLs posted on Facebook).	2019
<b>Hosting providers' knowledge and awareness of illegal activity</b>	The active hosting provider is the provider of information society services who performs an activity that goes beyond a merely technical service.	Italian Supreme Court judgment No. 7708 of 9 March 2019
<b>Notice and take-downs</b>	The evaluation of the exhaustiveness of the notice has to be done by the judge on the merit.	Italian Supreme Court judgment No. 7708 of 9 March 2019
<b>Measures against end-users</b>	The measures are not applicable to end-users: it is illegal to collect IP addresses.	Court of first instance of Rome, <i>Peppermint</i> case, decision 9 February 2007 and 19 August 2006
<b>Criminal sanctions</b>	N/A	N/A

Source: Italian response to European Audiovisual Observatory standardised survey

#### 6.16.4.1. Communication to the public

There is no record of judgments publicly available concerning the notion of communication to the public in relation to copyright infringement of audiovisual sports content. However, Italian courts adhere to the interpretation of the notion of communication to the public on the internet as construed by the Court of Justice of the European Union (CJEU) in its latest cases.

For instance, in decision No. 3512 of 15 February 2019, the Court of first instance of Rome made reference to CJEU cases C-527/15<sup>953</sup> and C-161/17<sup>954</sup> to conclude that the dissemination of copyrighted audiovisual content by the posting of URLs on a webpage hosted by Facebook amounts to an act of communication to a new public, other than the original one to which the rightsholder had authorised the distribution of the work.<sup>955</sup> In the case at issue, the URLs posted on the relevant webpage hosted by Facebook allowed users to access content distributed via an unauthorised YouTube channel (rather than via the platform where the same pieces of content were legally delivered by rightsholders). In light of this, the court found the act of making the content in question available to a new public to be illegal.

<sup>953</sup> CJEU, C-527/15 - Stichting Brein, of 26 April 2017, <https://curia.europa.eu/juris/liste.jsf?num=C-527/15>.

<sup>954</sup> CJEU, C-161/17 – Renckhoff, of 7 August 2018, <https://curia.europa.eu/juris/liste.jsf?num=C-161/17>.

<sup>955</sup> Court of first Instance of Rome, decision No. 3512 of February 15, 2019: [http://www.medialaws.eu/wp-content/uploads/2019/11/2019\\_3512.pdf](http://www.medialaws.eu/wp-content/uploads/2019/11/2019_3512.pdf).



#### 6.16.4.2. Online infringement of audiovisual sports content

Several cases have been found in relation to online infringements of audiovisual sports content, as follows:

- One case before the Court of first instance of Milan of 5 October 2020 concerned the illegal broadcast of sports events of the Serie A league on unauthorised websites by a content-delivery network; the Court of Milan issued an injunction to block the service at issue, as it contributed to the infringement in question by allowing, for instance, the temporary storage of data.<sup>956</sup>
- A decision of the Court of first instance of Frosinone of 7 February 2017 annulled a fine imposed by the Italian police (*Guardia di Finanza*) on the owner of a website which provided URLs of platforms which distributed copyrighted audiovisual works illegally via streaming, finding the lack of a profit-nature of the act of communication to the public.<sup>957</sup>
- In a case before the Court of first instance of Milan of 13 January 2016 (*RTI v. Rojadirecta*), the court ordered Fastweb S.p.A., in its capacity as an ISP, to prevent its users from accessing a website containing content constituting a copyright infringement and all the Domain Name System (DNS) and Internet Protocol (IP) addresses connected to the website in question (i.e. every website containing the name *Rojadirecta*, regardless of the country of establishment).<sup>958</sup>
- In a case before the Court of first instance of Rome of 29 May 2013, (*RTI and Lega Calcio v. Il Post*), the court found the publication by the online magazine *Il Post* of information on how sports events of the Serie A league, among others, could be illegally accessed by users through unauthorised sources to be illegal.<sup>959</sup>

Although there is no official report in Italy concerning such case law, broadcasters are apparently initiating legal action for copyright infringements related to sports events more frequently. However, the fact that legal proceedings (including interim proceedings) are formally filed by broadcasters does not exclude the possibility that other parties – such as sports event organisers – could join the claimant.

#### 6.16.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal

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<sup>956</sup> Court of first instance of Milan, order No. 42163 of 5 October 2020 (not available online).

<sup>957</sup> Court of first instance of Frosinone, judgment of 7 February 2017:

<https://www.civile.it/internet/visual.php?num=93661>.

<sup>958</sup> Court of first instance of Milan, judgment of 13 January 2016 (*RTI v. Rojadirecta*).

<sup>959</sup> Court of first instance of Rome, order No. 19349 of 29 May 2013 (*RTI and Lega Calcio v. Il Post*): [https://cdn.ilpost.it/wp-content/uploads/2013/09/Ordinanza\\_IlPost\\_RT1\\_050613.pdf?x72029](https://cdn.ilpost.it/wp-content/uploads/2013/09/Ordinanza_IlPost_RT1_050613.pdf?x72029).



activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

This point has triggered a significant debate in Italy, both in case law and among scholars. Italian courts have developed a new notion, namely the “active provider”. The notion of “active providers” includes those providers whose services are deemed not to be merely technical, passive and automatic because of the existence of certain features, which may reflect an “active role” on the part of the provider (including filtering, selection, indexing, organisation, cataloguing, aggregation, evaluation, use, modification, extraction, or promotion of content), if made in the context of a business-oriented management of the service. For this reason, active providers are allowed to benefit from the liability exemptions under stricter conditions compared to the merely passive providers, although they are not subject to a general monitoring obligation. Among the most disputed points in this debate lies the question of how much detail the *ex parte* notice the provider is served with needs to contain in order to consider it to have “actual knowledge” of the illegal items of content, i.e. if the notice must include the detailed list of all the URLs of the items of content/information to be removed or whether the information can be less detailed.

In a judgment of 19 March 2019, the Supreme Court (*Corte di Cassazione*) confirmed the figure of the “active hosting provider” and remanded to the Milan Court of Appeal the decision as to whether the communication shall be required to include the URLs of the content concerned or whether other details shall suffice for the purpose of putting the provider on notice.<sup>960</sup>

#### 6.16.4.4. Notice and take-down requirements

Regarding notice and take-down procedures, as mentioned above, the question of the notification has been a disputed point in Italian case law and, in particular:

- the degree of detail of the notification of the *ex parte* measure issued against the provider in order to consider the latter to be actually aware of the illegal content;
- whether the notification should include a detailed list of all the URLs of the content/information to be removed;
- whether the notification can consist of less detailed information than the above.

The Italian Supreme Court, after accepting the figure of the “active hosting provider”, held, in relation to the notification, that, for a provider to become aware, it is not required that the rightsholder send a formal cease and desist letter: a simple communication suffices. While some courts have required the indication of the relevant URLs,<sup>961</sup> other

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<sup>960</sup> Italian Supreme Court judgment No. 7708 of 19 March 2019, *Reti Televisive Italiane SpA v. Yahoo! Inc.*: <https://sentenze.laeggepertutti.it/sentenza/cassazione-civile-n-7708-del-19-03-2019>.

<sup>961</sup> See for example, *Delta TV v. Google and YouTube*, Tribunale di Torino, 7 April 2017: [https://www.laeggepertutti.it/wp-content/uploads/2017/04/sentenza\\_1928\\_17.pdf](https://www.laeggepertutti.it/wp-content/uploads/2017/04/sentenza_1928_17.pdf).

courts – notably those in Rome<sup>962</sup> – have considered the mere indication of the title of the work sufficient. The Supreme Court found that this is something for a judge to determine on the merits (and this was something that, according to the court, the lower court had failed to do). However, it did not exclude that a simple indication of the title of the work could be enough, especially for those works whose title consists of “words combined in an original way, so that they can be distinguished from common language”. A URL is required only when “indispensable” to identify the infringing content.<sup>963</sup>

#### 6.16.4.5. Removal and blocking orders

The measure applied most often by Italian courts in cases of online copyright infringement is the issuing of orders (including at the end of proceedings brought as a matter of urgency) requiring ISPs to take down certain pieces of content or information which constitute copyright infringements.

Based on recent CJEU case law, Italian courts can also order the relevant ISP to take the necessary steps to prevent the same content already found to be illegal or any equivalent content from being uploaded again. As noted above, AGCOM can only order mere conduit providers to disable access to websites/webpages or hosting providers to take down certain items of content and impose administrative fines if the addresses implicated in the order fail to comply with it.

Generally, removal and blocking orders target hosting providers and mere conduit providers respectively. In some cases, caching providers – such as the companies that maintain caching servers that speed the transfer of information across the internet – have also been required to remove from their search engine results certain items of information (e.g. when these providers facilitated access to content constituting copyright infringement).

An example of the application of an injunction – in this particular case, an interim injunction – and blocking measures is a case that came before the Court of first instance of Milan, in which, after an interim injunction had been issued, the rightsholder discovered that the platform had once again changed its name and was still making URLs available for the download of unlawful copies of its magazines through a new domain.<sup>964</sup> In this case, the Court ordered the adoption of “the most appropriate technical measures” in order to prevent the recipients of their respective services from accessing the portal that made available the same illicit content that was the subject of the proceedings.

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<sup>962</sup> See, for example, *RTI v Break Media*, Tribunale di Roma, 27 April 2016

<sup>963</sup> Italian Supreme Court judgment No. 7708 of March 19, 2019: <https://sentenze.laleggepertutti.it/sentenza/cassazione-civile-n-7708-del-19-03-2019>.

<sup>964</sup> Court of first Instance of Milan, decision 12 April of 2018: <https://sites.les.univr.it/cybercrime/wp-content/uploads/2017/08/TRIBUNALE-di-MILANO%E2%80%A8SEZIONE-SPECIALIZZATA-IN-MATERIA-D.pdf>.



#### 6.16.4.6. Measures against end-users ordered by the courts

There is no application of measures against end-users in Italy. The Court of first instance of Rome and the Italian Data Protection Authority (*Autorità garante per la protezione dei dati personali*) deemed as unlawful the collection of IP addresses by a third party acting as a “spy” (i.e. a monitoring a file-sharing network) on behalf of rightsholders and the subsequent identification of the subscribers through association with the personal data gathered by the electronic service providers in the absence of a valid legal basis (namely the consent of the data subjects to provide their personal data to a third party).<sup>965</sup>

#### 6.16.4.7. Compensation criteria adopted by the courts

Courts are also allowed to award “lump sum” compensation on the basis of an assessment of the amount that the rightsholder would have earned in the case of licenced use of the relevant work. Also, moral (or non-economic) damages can be awarded to rightsholders.

#### 6.16.4.8. Criminal sanctions ordered by the courts

There are no cases related to the application of criminal sanctions applied by courts concerning the copyright infringement of audiovisual sports content.

### 6.16.5. Reports and studies

From a non-legal perspective, there is one report about online piracy of protected content in Italy, entitled “Annual Report on piracy of audiovisual content in Italy” published on 9 July 2020 by the Federation for the Protection of Audiovisual and Multimedia Content (*Federazione per la tutela dei contenuti audiovisivi e multimediali* – FAPAV).<sup>966</sup> This report, however, does not provide any figures on illegal online transmission of sports events.

There are no reliable sources on technologies and business models used for the illegal streaming of sports content and/or studies describing the legal offer of online sports content in Italy.

Concerning awareness campaigns related to online piracy, it is worth mentioning the following two:

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<sup>965</sup> <https://www.garanteprivacy.it/home/docweb/-/docweb-display/docweb/1424358>.

<sup>966</sup> FAPAV, Annual Report on piracy of audio-visual content in Italy, 9 July 2020: [https://fapav.it/wp-content/uploads/2020/07/FAPAV-SINTESI-Indagine-sulla-pirateria-audiovisiva-2019-e-lockdown\\_9-Luglio-2020.pdf](https://fapav.it/wp-content/uploads/2020/07/FAPAV-SINTESI-Indagine-sulla-pirateria-audiovisiva-2019-e-lockdown_9-Luglio-2020.pdf).



- The campaign “#stopiracy – Piracy kills football” launched in 2019 by the Italian *Lega di Serie A* (the entity within the Italian Football Association competent to organise the Serie A league)<sup>967</sup>
- “*Guida anti pirateria – Illegal Pay TV*”, a set of guidelines to raise awareness and address the problem of online piracy of sports events, launched in 2019 by DZAN (a global over-the-top sports subscription video streaming service) and the National Consumer Protection Association (*Unione Nazionale dei Consumatori*).<sup>968</sup>

### 6.16.6. Data compilation

This country report is based on data compiled by Oreste Pollicino, professor of Constitutional Law at Bocconi University and Marco Bassini, postdoctoral Researcher in Constitutional Law at Bocconi University.

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<sup>967</sup> <https://www.legaseriea.it/stopiracy>.

<sup>968</sup> <https://www.consumatori.it/>.



## 6.16.7. Annex

**Table 107. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive (98/84/EC)</b>	Legislative Decree No. 373 of November 15, 2000
<b>Article 5 of Conditional Access Directive 98/84/EC – Infringing activities</b>	Article 6 establishing administrative fines
<b>InfoSoc Directive (2001/29/EC)</b>	Copyright Law No. 633/1941
<b>Article 6 InfoSoc – Obligations as to technological measures</b>	Article 171-ter
<b>Article 8 InfoSoc – Sanctions and remedies</b>	Articles 174-bis, 174-ter and 174-quarter
<b>IPRED (2004/48/EC)</b>	Legislative Decree No. 140 of 16 March 2006 Copyright Law
<b>Article 6 IPRED – Evidence and Article 7 IPRED – Measures for preserving evidence</b>	Article 161 of the Copyright Law
<b>Article 8 IPRED – Right of information</b>	Article 156-ter of the Copyright Law
<b>Article 9 IPRED – Provisional and precautionary measures</b>	Article 156 of the Copyright Law – Article 162-bis
<b>Article 10 IPRED – Corrective measures</b>	Articles 156, 158 and 159 of the Copyright Law
<b>Article 11 IPRED – Injunction</b>	Article 156 of the Copyright Law
<b>Article 12 IPRED – Alternative measures</b>	N/A
<b>Article 13 IPRED – Damages</b>	Article 158 of the Copyright Law
<b>E-Commerce Directive (2000/31/EC)</b>	Legislative Decree No. 70 of April 9, 2003 (E-Commerce Decree)
<b>Article 12-15 E-Commerce Directive – Liability of intermediary service providers</b>	Articles 14-17
<b>Article 17 E-Commerce Directive – Out-of-court dispute settlement</b>	Article 19
<b>Article 20 E-Commerce Directive – Sanctions</b>	Articles 18-21
<b>DSM Directive (EU 2019/790)</b>	Legislative Decree no. 177 of 8 November 2021.

## 6.17.LT – Lithuania – National legal summary<sup>969</sup>

### 6.17.1. General legal framework

#### 6.17.1.1. National legislation on copyright<sup>970</sup>

In Lithuania, the Law on Copyright and Related Rights of 18 May 1999, No. VIII-1185 [(*Autorių teisių ir gretutinių teisių įstatymas (su pakeitimais, padarytais 2014 m. gegužės 15 d. Nr. XII-888)*] as modified<sup>971</sup> is the general act that regulates the enforcement of copyright and related rights (the Copyright Law).<sup>972</sup> Moreover, the following laws are relevant to copyright enforcement: the Code of Civil Procedure,<sup>973</sup> the Code of Administrative Transgressions<sup>974</sup> and the Criminal Code.<sup>975</sup>

In Lithuania, copyright infringement is mainly considered as a civil law violation. However, significant copyright violations may be considered as “administrative transgressions” according to Article 122 of the Code of Administrative Transgressions or, in the case of grave violations, as criminal offences, according to Articles 191-194 of the Criminal Code.

Lithuanian law differentiates between administrative offences and crimes depending on commercial or non-commercial purposes.

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<sup>969</sup> It was not possible to receive feedback on the country report concerning Lithuania during the checking round with the national competent institutions.

<sup>970</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>971</sup> [seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.81676/asr](http://seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.81676/asr); A non-updated version is available in English at: <https://wipolex.wipo.int/fr/text/349855>

<sup>972</sup> No. 59/1976, available at the following URL: [http://www.cylaw.org/nomoi/enop/non-ind/1976\\_1\\_59/full.htm](http://www.cylaw.org/nomoi/enop/non-ind/1976_1_59/full.htm).

<sup>973</sup> <https://www.wipo.int/edocs/lexdocs/laws/en/lt/lt073en.pdf>

<sup>974</sup> [https://europam.eu/data/mechanisms/PF/PF%20Laws/Lithuania/Lithuania\\_Code%20of%20administrative%20Offences\\_1985\\_amended2016\\_eng.pdf](https://europam.eu/data/mechanisms/PF/PF%20Laws/Lithuania/Lithuania_Code%20of%20administrative%20Offences_1985_amended2016_eng.pdf)

<sup>975</sup> [https://www.legislationline.org/download/id/8272/file/Lithuania\\_CC\\_2000\\_am2017\\_en.pdf](https://www.legislationline.org/download/id/8272/file/Lithuania_CC_2000_am2017_en.pdf)

### 6.17.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>976</sup> has not been transposed to date (as at May 2021). The initial public draft transposing the DSM Directive<sup>977</sup> was presented to the Seimas (Parliament of the Republic of Lithuania) on 21 April 2021 and the transposition is expected by the end of 2021.

**Table 108. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	Not transposed yet
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	Law on Copyright and Related Rights of 18 May 1999 No. VIII-1185, amended by the law enacted on 12 October 2006, Law No. X-855  Code of Civil Procedure, Code of Administrative Transgressions, as well as the Criminal Code
<b>Information Society (InfoSoc) Directive</b>	Law on Copyright and Related Rights of 18 May 1999 No. VIII-1185, amended by the law enacted on 21 December 2011, Law No. XI-1833
<b>E-Commerce Directive</b>	Law on Information Society Services of 25 May 2006 No. X-614 <sup>978</sup>
<b>Conditional Access Directive</b>	Law on Electronic Communications of 15 April 2004 No. IX-2135

Source: Lithuanian response to European Audiovisual Observatory standardised survey

<sup>976</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>

<sup>977</sup> <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/c0973cc1a25c11ebb458f88c56e2040c?positionInSearchResults=20&searchModelUUID=ea9a177b-d036-4922-8905-a681b1b82ba9>.

<sup>978</sup> (*Lietuvos Respublikos informacinės visuomenės paslaugų įstatymas*)  
<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.277491/asr>.

## 6.17.2. National rules applicable to audiovisual sports content

### 6.17.2.1. Legal definition of “broadcaster” and “sports event organiser”

In Lithuania, a general definition of “broadcaster” is provided in Article 2 of the Law on Public Information of 2 July 1996 No. I-1418,<sup>979</sup> as follows:

*A broadcaster is a person who possesses a broadcasting and (or) rebroadcasting licence or in instances determined by laws, does not possess one, who assumes editorial responsibility for broadcast programmes, produces and broadcasts them himself, or permits another person to rebroadcast or transmit them unaltered.*

However, there are narrower definitions of “TV broadcaster”, “Radio broadcaster”, “Regional broadcaster”, “Rebroadcaster”, “Streaming service provider” and a broader definition of “publisher of the public information”, which cover all of the aforementioned and certain other activities.

Notably, a different definition of “broadcasting organisation” is provided in Article 2(43) of the Copyright Law, which refers to

*a legal person whose principal activity is the production and broadcasting of radio and/or television programmes, as well as a cable retransmission operator, which prepares and broadcasts its own programmes.*

It is worth noting that the aforementioned provision does not cover streaming activity.

Furthermore, there is no legal definition of “sports event organiser”. The Law on Sports of 20 December 1995, No. I-1151,<sup>980</sup> only provides for a definition of “sports events”.

### 6.17.2.2. Legal protection related to sports events

There is no specific rule or legal framework for sports event organisers under Lithuanian law, such as, for example, a type of “house” right that would be granted to them.

The recording of the event may be considered a work within the meaning of the Lithuanian Copyright Law, if it meets the criteria of originality. The maker of the recording is then a rightsholder, unless there are other contractual arrangements.

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<sup>979</sup> <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.170831?jfwid=1clcwosx33>.

<sup>980</sup> <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.377603?jfwid=-fxdp6vgs>



In any case, the rights to the audiovisual recording of the sports event and to its broadcast and online transmission are protected by the legal framework of related rights under Copyright Law. Such related rights are generally held by the broadcaster.

In particular, Article 56(1) of the Copyright Law states that:

*Broadcasting organisations shall have the exclusive right to authorise or to prohibit any of the following acts:*

- (1) retransmission of their broadcasts;*
- (2) cable retransmission of their broadcasts;*
- (3) fixation of their broadcasts;*
- (4) reproduction of fixations of their broadcasts;*
- (5) communication to the public of their broadcasts, if such communication is made in places accessible to the public against payment of an entrance fee;*
- (6) making available to the public of fixations of their broadcasts or their copies, including transmission via computer networks (the internet);*
- (7) distribution of fixations of their broadcast or copies thereof by sale or by other transfer of ownership or possession, as well as by importing or exporting.*

According to Article 77(1) of the Copyright Law, only owners of copyright, related rights and *sui generis* rights, persons authorised by them (i.e. collective management organisations) and licensees of exclusive rights, with the aim of defending the rights assigned to them, shall be entitled to take legal action in the case of infringement of their rights (for example through the illegal broadcasting or online transmission of sports events broadcasts). The aforementioned subjects are also entitled to apply for injunctions under Article 78 of the Copyright Law. Otherwise, there are no special rules concerning the entitlement to take legal action for the broadcasting or online transmission of sports events.

### 6.17.2.3. Other specific rules applicable to sports events

No other specific legal protection under copyright law applies to sports events in Lithuania. Furthermore, there are no specific rules about the use of sports content in social media in Lithuania.

**Table 109. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Related rights
Broadcaster	Yes	Related rights
Sports event organiser	No	Non-statutory rights

Source: Lithuanian response to European Audiovisual Observatory standardised survey

## 6.17.3. Remedies and sanctions applicable in the event of infringement

### 6.17.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

All forms of legal liability may be invoked in Lithuania in cases of online piracy of audiovisual sports content, depending on the circumstances of the case (nature of the infringement, purpose, scope, time span). Sanctions, remedies and injunctions applicable to sports online infringements are the same as for other copyright infringements. Civil remedies are available in parallel to administrative and criminal sanctions. Administrative or criminal liability is mutually exclusive.

According to Article 77 of the Copyright Law, civil remedies for copyright infringement include: 1) the recognition of rights; 2) injunctions with the aim of prohibiting the continuation of unlawful acts; 3) prevention from carrying out acts because of which the rights may be actually infringed or damage may be actually caused; 4) redress of the infringed moral rights (injunction to make appropriate amendments, to announce the infringement in the press, or any other way; 5) exaction of unpaid remuneration for unlawful use of a work, objects of related rights or *sui generis* rights; 6) compensation for property damage, including the lost income and other expenses and in certain cases non-pecuniary damage as well; 7) payment of compensation; 8) application of other measures for defence of these rights.

A specific remedy, which may also be used in cases of online piracy of audiovisual sports content is provided by Article 78 of the Copyright Law. Based on this provision, which transposes Article 8(3) of the InfoSoc Directive, rightsholders can request an injunction against an intermediary with the aim of prohibiting it from rendering services in a network to third parties who, in making use of these services, infringe a copyright, related right or *sui generis* right. The prohibition of the provision of those services shall encompass the suspension of a transmission of information related to the infringement of copyright, related rights or *sui generis* right or the elimination of such information, if an intermediary has the technical means to carry this out, or the removal of the access to information which infringes copyright, related rights or *sui generis* right.

Injunctions can only be issued against online intermediaries operating in Lithuania (a natural or legal person, including a branch or an affiliate of a foreign legal person, registered in the Republic of Lithuania). Furthermore, all the enforcement measures, procedures and remedies applicable to copyright infringement as per the IPRED (measures for preserving evidence, right of information) are provided by the Copyright Law and can be applied in cases of online piracy.



Concerning the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive), Article 74(4) of the Copyright Law considers that the following acts relating to the removal of effective technological measures shall also constitute an infringement: 1) the manufacture, importation, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components which are primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of any effective technological measures, or which have only a limited commercially significant purpose or use other than to circumvent; 2) the provision of services related to the circumvention of technological measures.

In addition, Article 76 of the Copyright Law regards as a violation of rights management information the removal or alteration of any rights management information without permission of the rightsholder, as well as the distribution, importation with the aim of distributing, broadcasting, communicating to the public or making available to the public objects of copyright or related rights in which rights management information has been removed or altered without permission, when the person knows, or has reasonable grounds to know, that by so doing he/she is inducing, enabling, facilitating or concealing an infringement of copyright or related rights.

Sanctions are not specific for the above-mentioned violations and the same sanctions and remedies as for other copyright infringement are available in these cases. As mentioned earlier, copyright infringement civil remedies include full pecuniary and moral damages. Pecuniary damages may be substituted for statutory compensation (statutory damages) for up to EUR 40 000.

Administrative transgression is punishable by an administrative fine of between EUR 280 and EUR 850. Criminal copyright infringement is punishable by a criminal fine, public work or imprisonment for up to three years.

#### 6.17.3.2. National bodies with competences on copyright enforcement

The Radio and Television Commission of Lithuanian (RTCL) is the body empowered in Lithuania to address extrajudicial blocking injunctions with respect to internet intermediaries based in Lithuania, against infringing websites.<sup>981</sup>

Otherwise, copyright infringements within the scope of administrative transgressions and criminal prosecution fall under the competence of police and public prosecution bodies, that can also order injunctions and impose sanctions.

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<sup>981</sup> See further details in section 6.17.3.4. of this country report.





### 6.17.3.3. Codes of conduct and Memorandums of Understanding

In Lithuania, no code of conduct or Memorandums of Understanding have been adopted by public or private entities in relation to the enforcement of intellectual property (IP) rights and the fight against online piracy.

### 6.17.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

The law does not include provisions on notice and take-down procedures in Lithuania. However, the Law on Information Society Services (ISSL),<sup>982</sup> which implements Articles 12 to 14 of the E-Commerce Directive on the liability of online intermediaries (mere conduit, caching and hosting), provides, in its Article 14(3), that the criteria which indicate that the service provider had acquired knowledge about the illegal conduct or illegal content should be defined in a special governmental order (Resolution No. 881 of 22 August 2007).<sup>983</sup> Under this order, the service provider is considered to have acquired the knowledge only upon receiving a notification about the illegal conduct of users or illegal content hosted on its servers.<sup>984</sup> That is, from the wording of the order it seems that, as long as the specific copyright infringement was not properly notified to the intermediary, no “actual knowledge” can be established.<sup>985</sup> Under Article 15 of the E-Commerce Directive, an intermediary does not have a general obligation to monitor the hosted content. This rule is not directly transposed into Lithuanian law.

In practice, notice and take-down procedures are used effectively in Lithuania only against internet intermediaries operating in the national territory. However, they are not considered as effective against internet intermediaries operating from outside of Lithuania, and especially outside of the EEA (e.g. those operating from Belarus or Russia, which are most frequently used by perpetrators).

In addition, notice and take-down procedures are not used in practice against the actual perpetrator (owner and operator) of the infringing online websites, as usually: i) the identity of the actual perpetrator is unknown (and Lithuanian law does not allow any legal or procedural action against an unknown defendant); ii) the majority of infringing online content servers and illegal content is hosted outside of Lithuania; iii) case law is

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<sup>982</sup> Law on Information Society Services of 25 May 2006, No. X-614 (ISSL) (*Lietuvos Respublikos informacinės visuomenės paslaugų įstatymas*), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.277491/asr>

<sup>983</sup>, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.303361?jfwid=1bc6m4yycd>

<sup>984</sup> See Article 22 of the same Resolution No. 881 of 22 August 2007.

<sup>985</sup> Rita Matulionytė and Mindaugas Lankauskas, BITTORENT LOSES AGAIN: A Recent Lithuanian BitTorrent Case and What It Means for the Construction of the E-commerce Directive, 4 (2013) JIPITEC 3, 179, <https://www.jipitec.eu/issues/jipitec-4-3-2013/3843/matulionyte.pdf>



usually not in favour of rightsholders, especially due to the very high evidentiary threshold and cost involved.

#### 6.17.3.5. Removal and blocking orders

In Lithuania, there is no specific injunction procedure in the case of online piracy of audiovisual sports content (i.e. the rules are the same for all copyright infringement whether online or offline and regardless of the type of content).

According to Article 81 of the Copyright Law, where there are sufficient grounds to suspect that an infringement of copyright or related right has been committed, the court may apply provisional and precautionary measures in order to prevent any imminent infringement, prohibit the continuation of an infringement and enforce the final decision of the court. These measures may: 1) prohibit persons from committing any imminent infringement of rights protected under the Copyright Law; 2) order the persons to temporarily cease the infringement of the rights protected under this Act; 3) prohibit the intermediary from providing services to third parties who use those services in violation of the rights under this Act; 4) seize, prohibit the entry into circulation of, or withdraw from circulation copies of works, other subject-matter of rights protected under this Act, and goods, if they are suspected of infringing copyright, related rights or *sui generis* rights; 5) seize the assets of persons suspected of infringing rights protected under this Act, held by them or by third parties, including bank accounts, in particular tools and equipment suspected of being used mainly for the creation or production of infringing copies of works, other subject-matter of rights protected under this Act, or goods; 6) apply other measures provided for in the Code of Civil Procedure.

If the applied provisional measures are infringed or such infringement continues, the court may order the alleged infringers to lodge an adequate security guarantee intended to ensure damage compensation to the rightsholder.

In order to apply for such measures, the applicant has to produce evidence of ownership of rights and of the alleged infringement, as well as evidence that irreparable harm will continue if an interlocutory injunction is not issued. Interlocutory injunctions against unspecified or anonymous parties are not allowed. Furthermore, it is to be noted that evidentiary thresholds and evidence admissibility requirements under this procedure are usually very high and costly.

Removal and blocking injunctions are also specifically regulated by Article 78(1) of the Copyright Law. Rightsholders may apply to the competent court for such injunctions with respect to any internet intermediaries against infringing websites. The procedure is the same as for any interim measures issued by the court, as provided by Articles 144-152 of the Code of Civil Procedure. The rightsholder has to submit evidence that the copyrighted content specified in the request has been made available to the public via public internet access (website). The evidence has to meet high standards of evidentiary threshold and admissibility. Formally, the court has to decide on blocking injunctions in three business days, but in practice the proceedings are usually longer due to courts requesting additional evidence or for other bureaucratic reasons.



Judicial blocking injunctions are used to establish permanent blocking against known defendants. Courts require injunctions to be specific and they do not allow dynamic injunctions if the redirect and mirror websites are not expressly specified. De-indexing injunctions are not applied as there are no search engines/indexes registered in Lithuania and requesting injunctions against foreign parties is exponentially more difficult. Other types of injunctions for which there is limited case law are domain name seizure and forced redirect injunctions.

In practice, extrajudicial blocking injunctions are much more popular and preferred over judicial blocking injunctions, due to a lower evidence threshold, much less bureaucracy and very fast procedures. Extrajudicial blocking injunctions are based on amendments to Article 78 of the Copyright Law that came into effect on 1 April 2019, with the following effect:

- 1) Rightsowners may apply to the RTCL with a request to issue mandatory orders to internet service providers (ISPs) where these service providers serve the third parties that use the services for activities that involve the illegal publication of works subject to copyright, related rights or *sui generis* rights (copyrighted content) over public computer networks (internet).
- 2) The RTCL has the mandate to issue mandatory orders to ISPs to block access to illegally published copyrighted content by blocking the domain name associated with the website until a copyright infringement is remedied.

On 27 March 2019, in light of these provisions of the Copyright Law, the RTCL approved “the Descriptor of the procedure for handling copyright owners’ requests to issue mandatory orders to internet service providers”.<sup>986</sup> Said Descriptor provided for the procedure by which requests by rightsholders – or any authorised persons<sup>987</sup> – to issue mandatory orders to ISPs are handled, and set requirements for the form and content of the request (follow-up on completed notice and take-down). The request of the

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<sup>986</sup> Decision No KS-14 of 27 March 2019 “On the approval of the Descriptor for handling copyright owners’ requests to issue mandatory orders to Internet service providers” (referred to as “the Descriptor”). The Descriptor was amended several times in order to address practical issues and improve its implementation. For further details on the functioning and implementation of the Descriptor, please refer to the RTCL Annual Report 2020 ([https://www.rtk.lt/uploads/documents/files/Annual%20reports/\(EN\)%202020%20m%20ataskaita.pdf](https://www.rtk.lt/uploads/documents/files/Annual%20reports/(EN)%202020%20m%20ataskaita.pdf)) and the RTCL Annual Report 2019 ([https://www.rtk.lt/uploads/documents/files/Annual%20reports/LRTK%202019%20m%20veiklos%20ataskaita\\_EN\\_JD\\_rev2.pdf](https://www.rtk.lt/uploads/documents/files/Annual%20reports/LRTK%202019%20m%20veiklos%20ataskaita_EN_JD_rev2.pdf)).

<sup>987</sup> On 18 November 2020, the RTCL passed Decision KS-150 further amending Decision KS-14 of 27 March 2019. The decision defined an extended definition of authorised persons which now includes licencees acting on the basis of a licence granted by the copyright owner, related rights’ holder or *sui generis* rightsholder (licensor), i.e., entities authorised to make copyrighted content accessible to the public. This also meant that both the rightsholders and their authorised persons acting on the basis of a power of attorney or a licence as well as organisations of collective administration of copyright and related rights had the possibility to petition the RTCL in cases of copyright and related rights’ violations.



rightsholder (or the authorised person) shall be supported with objective facts and evidence.

The RTCL also has the authority to issue mandatory orders to ISPs instructing them to block access to illegally published copyrighted content by blocking the domain name associated with the site until a copyright infringement is remedied (and later on to block the site).

The main advantage of this procedure is that the law provides for a presumption of illegal distribution of content (i.e. no evidence of infringement is required beyond identifying the content). The RTCL has to check the following elements: i) the main purpose of the website whose blocking has been requested is copyright infringement; ii) the website is publicly accessible; iii) internet users are directly or indirectly incited to upload, download, copy or otherwise use copyrighted content; iv) the owner of the website has not responded to or complied with the notice of take-down/stay-down. The decision is made within 14 days after receipt of the request and supporting documentation.

However, these injunctions are limited only to website blocking by Lithuanian internet intermediaries.

#### 6.17.3.6. Measures against end-users

There are no specific measures against end-users provided by Lithuanian law. Note that if the identity of the end-user is known, then such an end-user is treated as a perpetrator and all remedies and measures apply.

#### 6.17.3.7. Criminal sanctions

With reference to criminal proceedings and sanctions, no special rules or legal framework for criminal proceedings in the case of online piracy of audiovisual sports content are provided in Lithuania.

Such proceedings are generally initiated by filing a complaint to the police or public prosecutor's office, who may launch a criminal case investigation and pursue the conviction of the perpetrators in a court of law. The rightsholder may only be involved as the original complainant and they may acquire the status of victim of the criminal act.

Statutory compensation (up to EUR 40 000) is the most applicable alternative to damages claims in copyright cases, as the evidentiary burden in establishing actual damages is very high and complex. Punitive damages are not allowed in Lithuanian law.

**Table 110. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
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<b>Specific rules on sports content copyright</b>	National copyright law is applied.
<b>Specific rules on the use of sports content in social media</b>	No
<b>Specific competent bodies (other than judicial bodies)</b>	Radio and Television Commission of Lithuania (RTCL); Commission for the Coordination of Protection of Intellectual Property; police and public prosecution bodies
<b>Entitlement to take legal action</b>	Rightsholders and their authorised persons, as well as holders of exclusive licences acting within the scope of their licence
<b>Codes of conduct</b>	No
<b>Specific proceedings</b>	Extrajudicial blocking injunctions by the Radio and Television Commission of Lithuania (RTCL) against Lithuanian internet intermediaries
<b>Specific remedies</b>	No

Source: Lithuanian response to European Audiovisual Observatory standardised survey

**Table 111. National remedies in the case of copyright infringement**

Typology	Description
<b>Criminal prosecution and criminal sanctions</b>	Yes
<b>Differentiation of criminal sanctions based on acting for profit</b>	Yes
<b>Removal and blocking injunctions</b>	Yes
<b>Dynamic and/or live blocking injunctions</b>	No
<b>De-indexing injunctions</b>	No
<b>Damages and orders to cease and desist</b>	Yes
<b>Administrative offence and remedies</b>	Yes
<b>Notice and take-down procedures</b>	Yes

Source: Lithuanian response to European Audiovisual Observatory standardised survey

#### 6.17.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following contents: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against



end-users and criminal sanction, in relation to online infringement of audiovisual sports content.

**Table 112. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
Communication to the public		Case No. e2-38775-909/2019 (appeals court case No. e2A-993-794/2020)
Hosting providers' knowledge and awareness of illegal activity	N/A	N/A
Notice and take-downs	N/A	N/A
Measures against end-users	N/A	N/A
Criminal sanctions	N/A	N/A

*Source: Lithuanian response to European Audiovisual Observatory standardised survey*

#### 6.17.4.1. Communication to the public

In Lithuania, there is no directly related case law on the notion of communication to the public and copyright infringement of audiovisual sports content.<sup>988</sup>

#### 6.17.4.2. Online infringement of audiovisual sports content

No relevant national case law concerning online piracy of audiovisual sports content was detected in Lithuania. Furthermore, no legal actions initiated by sports event organisers or by broadcasters have been reported.

#### 6.17.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

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<sup>988</sup> One case concerned the payment of broadcasting royalties for the audiovisual works included (allegedly during game breaks) in the public broadcasts of the 2010 FIFA World Cup matches on large screens. The claims were brought by the Lithuanian Related Rights Association (AGATA) and were dismissed by the first instance court and the appeals court, as the plaintiff was not able to establish that particular audiovisual broadcasts were actually made. However, the rights to the FIFA World Cup matches were not questioned or defended. Case No. e2-38775-909/2019 (appeals court case No. e2A-993-794/2020).

In Lithuania, no case law was reported that would concern the condition of “actual knowledge” of illegal activity or awareness on the part of hosting providers, as stipulated under Article 14 of the E-Commerce Directive. The notice of illegal activity issued by the rightsholder is sufficient if no response is received within a reasonable time or if it is acknowledged and not complied with within thirty days.

#### 6.17.4.4. Notice and take-down requirements

There are no cases or special rules which would address the notification procedure of a copyright infringement of audiovisual sports content in Lithuania. General rules apply.

#### 6.17.4.5. Removal and blocking orders

Removals or blocking orders have been applied for copyright law infringement, especially in extrajudicial procedures before the RTCL. These measures are addressed to Lithuanian intermediaries (ISPs, etc.).

Judicial blocking measures can be addressed to foreign (non-Lithuanian) intermediaries (ISPs, search engines, etc.), however such measures are very rare.<sup>989</sup>

De-indexing injunctions are not practiced as there are no search engines/indexes registered in Lithuania and requesting injunctions against foreign parties is difficult.

#### 6.17.4.6. Measures against end-users ordered by the courts

Courts do not apply measures against end-users in Lithuania.

#### 6.17.4.7. Compensation criteria adopted by the courts

There are no cases related to the compensation of damages that have occurred to sports event broadcasters in Lithuania.

#### 6.17.4.8. Criminal sanctions ordered by the courts

Courts do not apply any criminal sanctions to online piracy of audiovisual sports content.

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<sup>989</sup> The last known case is from 2016 (case No. e2A-467-241/2021 and an original injunction was issued in case No. e2-3814-585/2016). The infringement was established and the Lithuanian Court of Appeal upheld earlier blocking measures.



### 6.17.5. Reports and studies

In Lithuania, there are reports or studies about online piracy of protected content and, for instance: the 2019 Vilnius University study on book piracy online.<sup>990</sup>

There are no national studies or reports on the use of technologies and business models for the illegal streaming of sports content.

Awareness campaigns against online piracy are carried out by the Minister of Culture of the Republic of Lithuania and by other collective administration associations. Moreover, the Lithuanian Culture Council sponsors smaller anti-piracy events.

### 6.17.6. Data compilation

This country report is based on data compiled by Prof Dr Mindaugas Kiškis, a professor at Mykolas Romeris University, specialising in intellectual property, privacy and technology law.

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<sup>990</sup> [https://www.vu.lt/leidyba/images/eknygos/Nelegaliu\\_knygu\\_naudojimas\\_Lietuvoje\\_Ataskaita.pdf](https://www.vu.lt/leidyba/images/eknygos/Nelegaliu_knygu_naudojimas_Lietuvoje_Ataskaita.pdf).



## 6.17.7. Annex

**Table 113. Overview of relevant transposition measures**

EU directives	National law
Conditional Access Directive (98/84/EC)	Law on Electronic Communications of 15 April 2004, No. IX-2135
InfoSoc Directive (2001/29/EC)	Law on Copyright and Related Rights of 18 May 1999, No. VIII-1185
Article 6 InfoSoc – Obligations as to technological measures	Article 74
Article 8 InfoSoc – Sanctions and remedies	Article 78
IPRED (2004/48/EC)	Law on Copyright and Related Rights of 18 May 1999, No. VIII-1185
Article 6 IPRED – Evidence	Articles 78-80
Article 8 IPRED – Right of information	Article 79
Article 10 IPRED – Corrective measures	Article 82
Article 11 IPRED – Injunctions	Article 81
Article 15 IPRED – Publication of judicial decisions	Article 85
E-Commerce Directive (2000/31/EC)	Law on Information Society Services of 25 May 2006, No. X-614
Articles 12/13/14 and 15 E-Commerce Directive	Sections V-VII (Articles 12-17)
Articles 16 to 20 E-Commerce Directive	Sections VI-VII (Articles 16-17)
DSM Directive (EU 2019/790)	Not transposed yet (as at May 2021)

## 6.18. LU – Luxembourg – National legal summary<sup>991</sup>

### 6.18.1. General legal framework

#### 6.18.1.1. National legislation on copyright<sup>992</sup>

In Luxembourg, there are several acts that regulate the enforcement of copyright and related rights, as follows:

- The Law of 18 April 2001 on copyright, related rights and databases, as last amended (*Loi modifiée du 18 avril 2001 sur les droits d'auteur, les droits voisins et les bases de données*) (hereinafter also referred to as the « Copyright Law »),<sup>993</sup>
- The Law of 22 May 2009 implementing Directive 2004/48/CE of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (IPRED) designating Community design courts and amending : the amended law of 18 April 2001 on copyright, related rights and databases; the amended law of 20 July 1992 amending the system of patents for invention (*Loi du 22 mai 2009 portant transposition de la directive 2004/48/CE du Parlement européen et du Conseil du 29 avril 2004 relative au respect des droits de propriété intellectuelle et portant désignation des tribunaux des dessins ou modèles communautaires, et ayant pour objet de modifier:*
  - la loi modifiée du 18 avril 2001 sur les droits d'auteur, les droits voisins et bases de données,
  - la loi modifiée du 20 juillet 1992 portant modification du régime des brevets d'invention.);<sup>994</sup>

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<sup>991</sup> The country report on Luxembourg was commented by the Intellectual property office of the Ministry of economy during the checking round with the national competent institutions.

<sup>992</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>993</sup> Law of 18 April 2001 on copyright, related rights and databases, as amended (*Loi modifiée du 18 avril 2001 sur les droits d'auteur, les droits voisins et les bases de données*), as last amended, <http://legilux.public.lu/eli/etat/leg/loi/2001/04/18/n2/jo>.

<sup>994</sup> Law of 22 May 2009 implementing Directive 2004/48/CE of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (IPRED) (*Loi du 22 mai 2009 portant transposition de la directive 2004/48/CE du Parlement européen et du Conseil du 29 avril 2004 relative au respect des droits de propriété intellectuelle et portant désignation des tribunaux des dessins ou modèles communautaires*), <http://legilux.public.lu/eli/etat/leg/loi/2009/05/22/n2/jo>.



- The Law of 2 August 2002 on the legal protection of services based on, or consisting of, conditional access (*Loi du 2 août 2002 sur la protection juridique des services à accès conditionnel et des services d'accès conditionnel*)<sup>995</sup>.

In Luxembourg, copyright infringement is considered both a criminal offence and a civil law violation, and the Copyright Law outlines specific provisions regarding both aspects.<sup>996</sup> Civil copyright infringement exists irrespective of fault. The good faith of the infringer is therefore irrelevant. The notion of fault is only required in the context of criminal proceedings where the law requires a malicious or fraudulent infringement of the copyright.

Fraud consists in knowingly exploiting the work of others, i.e. taking advantage of it in a public way and without prior authorisation. Fraud does not require that the infringer acts to make a profit.

#### 6.18.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights, into national law, as reported in the table below.

The Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (DSM Directive) has not been transposed to the date (as at September 2021), but there is an ongoing legislative process.<sup>997</sup>

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<sup>995</sup> Law of 2 August 2002 on the legal protection of services based on, or consisting of, conditional access (*Loi du 2 août 2002 sur la protection juridique des services à accès conditionnel et des services d'accès conditionnel*), <http://legilux.public.lu/eli/etat/leg/loi/2002/08/02/n1/jo>.

<sup>996</sup> See Articles 72 to 81 for civil remedies and Articles 82 to 86 for criminal remedies.

<sup>997</sup> *Projet de loi portant transposition de la directive 2019/790 du Parlement européen et du Conseil du 17 avril 2019 sur le droit d'auteur et les droits voisins dans le marché unique numérique et modifiant les directives 96/9/CE et 2001/29/CE, et modifiant :*

1° la loi modifiée du 18 avril 2001 sur les droits d'auteur, les droits voisins, et les bases de données ;

2° la loi du 3 décembre 2015 relative à certaines utilisations autorisées des oeuvres orphelines ;

3° la loi du 25 avril 2018 relative à la gestion collective des droits d'auteur et des droits voisins et l'octroi de licences multiterritoriales de droits sur des oeuvres musicales en vue de leur utilisation en ligne dans le marché intérieur,

<https://chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&id=7847>.



Table 114. Table 1. Regulatory framework

EU directive	National law
DSM Directive	N/A
Intellectual Property Rights Enforcement Directive (IPRED)	Law of 22 May 2009 implementing Directive 2004/48/CE on the enforcement of intellectual property rights <sup>998</sup>
InfoSoc Directive	Law of 18 April 2001 on copyright, related rights and databases, as amended by the <a href="#">Amending Law of 18 April 2004</a>
E-Commerce Directive	Law of 14 August 2000 relating to electronic commerce and trusted services, as amended <sup>999</sup> .
Conditional Access Directive	Law of 2 August 2002 on the legal protection of services based on, or consisting of, conditional access <sup>1000</sup>

Source: Luxembourg response to European Audiovisual Observatory standardised survey

## 6.18.2. National rules applicable to audiovisual sports content

### 6.18.2.1. Legal definitions of broadcaster and sports event organiser

A reference to broadcasters can be found in two different laws.

The law of 8 June 2004 on freedom of expression in the media, as amended, defines a broadcaster (“*diffuseur*”) as any person who, on his own behalf or on the behalf of others, disseminates and distributes a publication in any form whatsoever<sup>1001</sup>. It is expressly indicated that this definition shall include the intermediary services providers referred to in Articles 60 to 62 of the amended Law of 14 August 2000 on electronic

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<sup>998</sup> Loi du 22 mai 2009 portant transposition de la directive 2004/48/CE du Parlement européen et du Conseil du 29 avril 2004 relative au respect des droits de propriété intellectuelle et portant désignation des tribunaux des dessins ou modèles communautaires, et ayant pour objet de modifier:

- la loi modifiée du 18 avril 2001 sur les droits d’auteur, les droits voisins et bases de données,
- la loi modifiée du 20 juillet 1992 portant modification du régime des brevets d’invention.

<https://legilux.public.lu/eli/etat/leg/loi/2009/05/22/n2/jo>

<sup>999</sup>Loi du 14 août 2000 relative au commerce électronique et aux services de confiance : <http://legilux.public.lu/eli/etat/leg/loi/2000/08/14/n8/jo>.

<sup>1000</sup>Loi du 2 août 2002 sur la protection juridique des services à accès conditionnel et des services d’accès conditionnel. <https://legilux.public.lu/eli/etat/leg/loi/2002/08/02/n1/jo>

<sup>1001</sup> Article 3, 2) of the Law of 8 June 2004 on freedom of expression in the media, as amended (Loi modifiée du 8 juin 2004 sur la liberté d’expression dans les médias) (<http://data.legilux.public.lu/file/eli-etat-leg-memorial-2010-69-fr-pdf.pdf>).



commerce and trust services. The term “publication” means information made available to the public or categories of persons by a publisher.<sup>1002</sup>

The Copyright Law sets out specific (related) rights for broadcasting organisations (“*organismes de radiodiffusion*”) in Article 53, without defining them. However, it should be noted that Article 41 defines the term “broadcasting” (“*radiodiffusion*”) and Article 52bis provides that the status of a broadcasting organisation belongs to those who appear as such on the work, by virtue of the mention of their name. This constitutes a mere presumption that can be rebutted by providing evidence to the contrary.

There is no legal definition of “sports events organisers” in Luxembourg law.

#### 6.18.2.2. Legal protection related to sports events

Sports events are unlikely to be, as such, the subject matter of copyright protection under Luxembourg law. Furthermore, there is no specific protection for sports event organisers. They may, however, rely on other provisions such as trademark law, unfair competition or on conditional access agreements (based on “house rights”).

However, audiovisual recordings of sports events are likely to benefit from copyright protection provided that they meet the requirement of originality. This is likely to occur where the director is able to make “free and creative choices” as to where to position the cameras, their number, and/or to instruct the camera operators during the sports event to focus on specific moments of the game, etc. Also, the works and other subject matter included in the recording and transmission of sports events, such as a background sound recording or an opening sequence, for example, are also likely to fall under copyright protection.

According to Article 21 of the Copyright Law, the authors of audiovisual work are the “*producteur*” (producer) and the “*réalisateur principal*” (director). Unless otherwise stipulated, the authors and other creators of audiovisual work are presumed to have transferred all audiovisual exploitation rights to the producer on an exclusive basis, except for the creators of the musical compositions.<sup>1003</sup>

Broadcasting organisations are provided with the exclusive right to authorise or to prohibit the fixation of their broadcasts and to distribute those fixations, as well as the exclusive right to authorise or prohibit the rebroadcasting of their broadcasts by wire or wireless means, as well as the communication to the public of their broadcasts in such a way that members of the public may access them from a place and at a time individually chosen by them<sup>1004</sup> (related rights).

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<sup>1002</sup> Article 3, 4) of the Law of 8 June 2004 on freedom of expression in the media, as amended.

<sup>1003</sup> Article 24 of the Copyright Law, as amended.

<sup>1004</sup> Article 53 of the Copyright Law.

Under Luxembourg law, broadcasting organisations (based on their related rights over broadcast programmes) and rightsholders are entitled to take legal action in the case of infringement of broadcasting or online transmission of a sports event. Sport leagues and sports event organisers are not entitled to take legal action in such cases, unless they can base their claim on their trademark rights or on a passing-off action (civil claim).

### 6.18.2.3. Other specific rules applicable to sports events

There are no other specific rules applicable to sports events under national law. Furthermore, no special rules exist in relation to the use of sports content on social media in Luxembourg.

**Table 115. Definitions of the main concepts concerning audiovisual sports events**

Concept	Existence of a definition	Relevant rights
<b>Broadcaster</b>	Article 3 of the Law of 8 June 2004 on freedom of expression in the media, as amended, defines a broadcaster (“ <i>diffuseur</i> ”)	Copyright and related rights protection
<b>Sports event organiser</b>	No	House rights (and trademark rights)

*Source: Luxembourg response to European Audiovisual Observatory standardised survey*

## 6.18.3. Remedies and sanctions applicable in the event of infringement

### 6.18.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

The following civil sanctions and remedies are applicable in Luxembourg for breaches of the rights set out by the Copyright Law<sup>1005</sup> (implementing the rights provided

<sup>1005</sup> Loi du 18 avril 2001 sur les droits d’auteur, les droits voisins et les bases de données (<https://legilux.public.lu/eli/etat/leg/loi/2001/04/18/n2/jo>)



in the InfoSoc Directive<sup>1006</sup> and several other directives), as set out in Article 74 to 81 of that law: (i) cessation of the infringement, under a recurring penalty; (ii) civil damages, including the seizure of any counterfeit goods and infringing material, and their delivery to the rightsholder; (iii) corrective measures, such as recall and definitive removal from the channels of commerce of the infringing goods, or destruction of the materials and instruments that have been used primarily in the creation or manufacture of such goods, at the expense of the infringer; (iv) publication and posting of the judgment, at the infringer's expense; (v) in the case of bad faith of the infringer, the transfer to the rightsholder of all or part of the profit made in relation to the infringement; (vi) in the case of bad faith of the infringer, the transfer to the rightsholder of the infringing goods and materials.

All these measures may be invoked by the producer of audiovisual sports content and by broadcasting organisations or any other rightsholders.

Furthermore, Chapter 4 of the Law of 22 May 2009<sup>1007</sup> transposing the IPRED provides for measures to preserve the evidence available to rightsholders. Thus, before initiating proceedings on the merits of the case, rightsholders may initiate interim proceedings before the president of the District Court (*Président du Tribunal d'Arrondissement*) in order to obtain a court order instructing an expert to proceed with a detailed description of the alleged infringing goods or to proceed to a physical seizure of them and, in appropriate cases, of the materials and implements used in the production and/or distribution of these goods and the documents relating thereto. For such an order to be granted, rightsholders need to present reasonable evidence that their intellectual property rights are being infringed or are about to be infringed.

In addition, in order to obtain provisional and precautionary measures, a rightsholder may request that the president of the District Court issues, against the alleged infringer; an interlocutory injunction intended to prevent any imminent infringement of its copyright; or to forbid – on a provisional basis and subject, where appropriate, to a recurring penalty payment – the continuation of the alleged infringement of that right, or to make such a continuation subject to the lodging of guarantees intended to ensure the compensation of the rightsholder; or to order the seizure or delivery of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right.

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<sup>1006</sup> 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 (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001L0029>)

<sup>1007</sup> Article 72 of the Copyright Law makes a reference to this chapter.



As regards information rights, where the District Court (*Tribunal d'arrondissement*) considers that an infringement has been established, the infringer or any third party can be ordered, at the request of the rightsholder, to disclose any relevant information on the origin and distribution networks of the goods or services which infringe the intellectual property right.

Concerning the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive), Articles 71ter to 71 sexies of the Copyright Law provide that the circumvention of any effective technical measure by a person who knows, or has reasonable grounds to believe, that he/she is pursuing this objective, is prohibited. It is also prohibited to manufacture, import, distribute, sell, rent, advertise for sale or lease, or to possess for commercial purposes, devices, products or components, or to provide services that are promoted, advertised or marketed, for the purpose of circumventing the protection, or which have only a limited commercial purpose or limited use other than to circumvent the protection, or which are primarily designed, produced, adapted or realised for the purpose of enabling or facilitating the circumvention of the protection of any effective technical measure. Anyone who contravenes such a prohibition and who does not act for strictly private purposes is punishable by a criminal fine, and the seizure and/or the destruction of the counterfeiting devices, products or components may also be ordered by the court. Repeated offences are punishable by imprisonment and the court may order the closure of the establishment operated by the infringer. At the convicted person's expense, the publication and posting of the judgment pronouncing the sentence can also be ordered.

Where the infringing activities take place in Luxembourg, or where the alleged infringer is located in Luxembourg, a rightsholder can request the Luxembourg civil courts to order the infringer to stop, under penalty, its illicit activities, as well as to pay damages to compensate the harm (action on the merits of the case/ "*action au fond*")<sup>1008</sup>. A rightsholder can also request the Luxembourg civil courts to issue a cessation order against intermediaries whose services are used to infringe copyright and to allocate damages. Such an action can be brought directly before the court, without the need to sue the author of the infringement first.

A rightsholder may also apply for an injunction before the president of the Luxembourg District Court through interim proceedings to obtain a cessation order, if applicable, under penalties, against the alleged infringer<sup>1009</sup> ("*action en cessation*"). Such interim proceedings do not enable rightsholders to obtain damages to compensate their loss.

Furthermore, within the meaning of the Conditional Access Directive, the manufacture, import, distribution, sale, rental or possession for commercial purposes of illicit devices, as well as the installation, maintenance or replacement for commercial purposes of an illicit device and/or the use of commercial communications to promote

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<sup>1008</sup> Articles 74 to 79 of the Copyright Law.

<sup>1009</sup> Article 81 of the Copyright Law.



illicit devices are considered as both a criminal offence and a civil law violation, as stated in the Luxembourg Law of 2 August 2002 on the legal protection of services based on, or consisting of, conditional access. This law is not directed, as such, to protect audiovisual sports content. Breaches of this law are punishable by imprisonment for a term of eight days to two years and a fine of EUR 251 to EUR 100 000 or one of these penalties only. The seizure of illicit devices, material and support relating to commercial communications and gains from prohibited activities will always be pronounced, even if those infringing materials do not belong to the convicted person. The court may also order the posting or publication of the decision.

Without prejudice to any other (civil) legal remedies, such as damages, the provider of one or more protected services whose interests are harmed by one of the activities mentioned above, may bring an action for an injunction before the Magistrate presiding over the commercial division of the District Court (*Président du Tribunal d'Arrondissement siégeant en matière commerciale*). This action is brought and judged in the same way as in interim proceedings. The judge may also order the publication and posting of all or part of the order, at the expense of the unsuccessful party (Articles 3 to 6 of the Law of 2 August 2002 on the legal protection of services based on, or consisting of, conditional access).

The Law of 2 August 2002 on the legal protection of services based on, or consisting of, conditional access is not directed, as such, to protect audiovisual sports content. However, as long as audiovisual sport content is accessible through a conditional access (paid TV or online platform), any equipment or software designed or adapted to give access to such audiovisual sports content without the authorisation of the service provider may qualify as a prohibited illicit device, within the meaning of this law.<sup>1010</sup> In such an event, the provisions of this aforementioned law may be invoked in justice against any person manufacturing, importing, or distributing such devices for commercial purposes. It cannot, however, be used against the end-user of the device.

#### 6.18.3.2. National bodies with competences on copyright enforcement

In Luxembourg, there is no national authority other than judicial bodies with specific competences to address copyright infringements.

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<sup>1010</sup> “Illicit device” shall mean any equipment or software designed or adapted to give access to a protected service in an intelligible form without the authorisation of the service provider.



### 6.18.3.3. Codes of conduct and Memorandums of Understanding

In Luxembourg, no code of conduct or Memorandum of Understanding (MoU) have been adopted by a public or private entity in relation to the enforcement of IP rights and the fight against online piracy.

### 6.18.3.4. Notice and take-down procedures

Notice and take-down (“NTD”) procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

In particular, NTD mechanisms are not limited by Luxembourg law to a specific type of content but may be requested with regard to any illegal content, that is to say, any content in violation of Luxembourg law,<sup>1011</sup> such as the infringement of copyright or of the related rights of an audiovisual producer or of broadcasting organisations. NTD mechanisms can therefore be used in Luxembourg in cases concerning online piracy of audiovisual sports content.

Following a complaint, intermediaries need to assess whether such a complaint is reliable and whether the content is illegal. Based on this assessment, the intermediary shall decide either to remove the contested content or to keep it available. In any case, Luxembourg law does not provide for specific notification proceedings or any formal requirements.

Furthermore, a notice and stay-down (“NSD”) mechanism is not provided for under Luxembourg law. Indeed, under Article 63 of the Law of 14 August 2000 relating to electronic commerce and trusted services, as amended, intermediaries shall not be under a general obligation to monitor the information they transmit or store, nor shall they be under a general obligation to seek facts or circumstances representing unlawful activities. The situation may be different after the implementation of the DSM Directive which introduced a NSD mechanism against online content-sharing service providers.

### 6.18.3.5. Removal and blocking orders

Injunctions may be obtained either through interim proceedings (“*procédure en référé*”), based on Article 81 of the Copyright Law, or through an action on the merits of the case, based on Article 76 thereof. Both proceedings are initiated by a writ of summons notified by a bailiff (“*huissier de justice*”) to the other party. Interim proceedings allow the courts to render a decision within a relatively short period of time (usually within a few months), but damages or corrective measures may not be ordered by the judge. In practice, taking

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<sup>1011</sup> Articles 60 to 62 of the Law of 14 August 2000 relating to electronic commerce and trusted services, as amended.



into consideration the average duration of these types of proceedings, a judgment on the merits of the case can be expected within two years.

As far as online piracy of audiovisual sports content is concerned, Luxembourg law does not provide for any specific type of injunction that can be issued by the court. In the event a rightsholder considers that the measures implemented by the infringer or by the intermediaries are not sufficient, it has to return to the court to rule on enforcement difficulties.

Only alleged infringements committed on the disputed websites identified in the decision are covered by the injunction: the injunction cannot extend to all illegal websites that might later be brought to the knowledge of the intermediary by the plaintiff. The plaintiff would have to apply for, and obtain, a new injunction, establishing the existence of the (new) alleged infringement.

In terms of applicability of injunctions to live sports events, it is to be noted that there are no specific provisions that address the issue of live sport events or any other sort of event. Injunction actions, even if judged in an interim manner, are largely reactive and so not always effective.

#### 6.18.3.6. Measures against end-users

Copyright Law provides general rules against copyright and related rights infringers. No specific measures aimed only at an end-user are provided for under the Copyright Law and there is no case law on the matter.

#### 6.18.3.7. Criminal sanctions

As regards criminal proceedings and criminal sanctions, there is no specific legal framework for criminal proceedings in the case of online piracy of audiovisual sports content under Luxembourg law. Such action would therefore follow the general applicable rules.

As mentioned earlier in relation to the circumvention of technical measures, infringers may be held liable to a fine of EUR 251 to EUR 250 000. These amounts may be doubled where the offender is a legal entity. Repeated offences are punishable by imprisonment of between three months and two years and a fine of EUR 500 to EUR 500 000 or one of these penalties only. In addition, the court may order, either definitively or temporarily for the period it specifies, the closure of the establishment operated by the infringer for a period not exceeding five years. It may also order, at the



convicted person's expense, the publication and posting of the judgment. Counterfeiting goods can also be confiscated and/or destroyed.<sup>1012</sup>

Criminal proceedings for copyright and related rights infringements are rarely brought by the prosecution authorities *ex officio* but are initiated by the victim of the infringement. The plaintiff may file a complaint either before the investigating judge ("*juge d'instruction*"), together with a civil claim, in which case the investigating judge will, according to Luxembourg criminal procedure, have to open a judicial investigation, or with the public prosecutor's office ("*Parquet*"), which is free to prosecute or not. The risk is therefore that, if this second route is chosen, the case is closed without further action.

A large number of intellectual property cases stop at the preliminary level because the infringers are not identifiable or are unreachable

**Table 116. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No, national copyright law is applied
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial bodies)	No
Entitlement to take legal action	Yes (broadcasters and rightsholders)
Codes of Conduct	No
Specific proceedings	No
Specific remedies	No

Source: Luxembourg response to European Audiovisual Observatory standardised survey

**Table 117. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	No
Removal and blocking injunctions	Yes
Dynamic and/or live blocking injunctions	Not mentioned in national law; never applied
De-indexing injunctions	Not mentioned in national law; never applied

<sup>1012</sup> Articles 82 to 86 of the Copyright law.



Typology	Description
Damages and order to cease and desist	Yes
Administrative offence and remedies	N/A
Notice and take-down procedure	Yes

Source: Luxembourg response to European Audio-visual Observatory standardised survey

## 6.18.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures aimed at end-users and criminal sanctions, in relation to online infringement of audiovisual sports content.

**Table 118. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
Communication to the public	N/A	N/A
Hosting providers' knowledge and awareness of illegal activity	N/A	N/A
Notice and take-downs	N/A	N/A
Measures against end-user	N/A	N/A
Criminal sanction	N/A	N/A

Source: Luxembourg response to European Audiovisual Observatory standardised survey

### 6.18.4.1. Communication to the public

In Luxembourg, there is no national case law relating to the notion of communication to the public and copyright infringement of audiovisual sports content.

### 6.18.4.2. Online infringement of audiovisual sports content

No relevant national case law concerning online piracy of audiovisual sports content was detected in Luxembourg. Furthermore, no legal actions initiated by sports event organisers or by broadcasters have been reported.



#### 6.18.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on the condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

According to the national courts, a precise and detailed notification shall be sent to the intermediary, if possible by registered letter, in order to prove that ISPs had actual knowledge of illegal activity.

#### 6.18.4.4. Notice and take-down requirements

Luxembourg law does not provide any details concerning the requirements that need to be fulfilled for a notification procedure of a copyright infringement of audiovisual sports content. In practice, it is up to the plaintiff to justify having duly notified the intermediary of the infringement. Failing a satisfactory reply, it is recommended that a bailiff is asked to proceed to an online report, prior to the filing of an action for an injunction, in order to acknowledge that the intermediary was notified and failed to reply in a satisfactory way.

#### 6.18.4.5. Removal and blocking orders

Removals or blocking orders have been applied by the Luxembourg courts. According to Luxembourg case law, the law does not give the courts the authority to order concrete technical measures in order to remove or block illegal content. It is therefore up to the party who is ordered to cease copyright infringements to comply with the decision by choosing the appropriate technical means.<sup>1013</sup>

Orders are addressed to the intermediaries concerned, such as registrars, hosting providers, etc.

As mentioned above, rightsholders may apply for an injunction against any intermediary whose services are being used by a third party to infringe intellectual property rights. It results from Luxembourg case law<sup>1014</sup> that any person who gives access to, hosts, transmits or indexes, content, products and services offered illegally by third parties, or provides internet-based services to third parties that are used to perform counterfeiting, is to be considered as an intermediary within the meaning of the Copyright Law.<sup>1015</sup> The fact that intermediaries can be exempted from liability under E-Commerce Directive does not affect the possibility of injunctions of different kinds.

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<sup>1013</sup> TA Lux., 11 May 2011, n°135.780

<sup>1014</sup> TA Lux., 11 May 2011, n°135.780

<sup>1015</sup> TA Lux., référé, 11 May 2011, n°349/2011; TA Lux., référé, 11 March 2014, n°54/2014; TA Lux., référé, 22 February 2017, n°52/2017; TA Lux., référé, 16 March 2016, n°64/2016

Furthermore, a case clarified that an injunction referred only to the disputed websites identified in the decision and could not extend to all illegal websites that might later be brought to the knowledge of the intermediary by the plaintiff. The plaintiff would have to apply for, and obtain, new orders for further disputed websites.<sup>1016</sup>

There is no case law in Luxembourg regarding online piracy of audiovisual sports content.

#### 6.18.4.6. Measures against end-users ordered by the courts

The courts have not, as yet, applied any measures against end-users.

#### 6.18.4.7. Compensation criteria adopted by the courts

Courts apply the compensation criteria as stated by law. In particular, the Copyright Law provides criteria for the calculation of damages in copyright infringement matters. According to Article 74 of this law, when setting the damages, the court shall: (i) consider all appropriate aspects, such as any negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the rightsholder by the infringement; (ii) alternately, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due had the infringer requested authorisation to use the intellectual property right in question.

The burden of proof to show the prejudice suffered by the plaintiff as a result of the infringement lies on him or her, and it can prove very difficult for the rightsholder to provide such evidence. For this reason, judges often prefer to award the rightsholder a “lump sum” that cover an estimation of the negative economic consequences that the rightsholder has been reasonably found to have suffered.

Damages are usually modest, and the decisions are not very detailed regarding how damages are calculated. Punitive damages are not allowed under Luxembourg law.

#### 6.18.4.8. Criminal sanctions ordered by the courts

The courts have not, as yet, applied any criminal sanctions to online piracy of audiovisual sports content.

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<sup>1016</sup> TA Lux., référé, 11 March 2014, n°54/2014.



### 6.18.5. Reports and studies

In Luxembourg, no reports or studies have been detected about online piracy of protected content, which would also address the specific issue of illegal online transmissions of sports events. Furthermore, there are no studies describing the legal offer of online sports content in Luxembourg.

Awareness campaigns are conducted in Luxembourg, in relation to copyright infringement, although not specifically directed at online piracy of sports events.

### 6.18.6. Data compilation

This country report is based on data compiled by Claire Denoual and Claire Leonelli, intellectual property lawyers in Luxembourg.





## 6.18.7. Annex

**Table 119. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive (98/84/EC)</b>	Luxembourg Law of 2 August 2002 on the legal protection of services based on, or consisting of, conditional access
<b>InfoSoc Directive (2001/29/EC)</b>	Law of 18 April 2001 on copyright, related rights and databases, as amended (Copyright Law)
<b>Article 6 InfoSoc - Obligations as to technological measures</b>	Article 71ter Copyright Law
<b>Article 8 InfoSoc - Sanctions and remedies</b>	Article 71quater Copyright Law
<b>IPRED (2004/48/EC)</b>	Law of 22 May 2009 implementing Directive 2004/48/CE of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, designating Community design courts and amending: the amended law of 18 April 2001 on copyright, related rights and databases; the amended law of 20 July 1992 amending the system of patents for invention.
<b>Article 6 IPRED – Evidence</b>	Articles 22 - 30
<b>Article 8 IPRED – Right of information</b>	Article 78 of the Copyright law
<b>Article 10 IPRED – Corrective measures</b>	Articles 22 - 30 (conservative and provisional measures) Article 72 (conservative and provisional measures) (Copyright Law) Articles 74 and 75 – Corrective measures (Copyright Law)
<b>Article 11 IPRED – Injunctions</b>	Articles 22 - 30
<b>Article 15 IPRED – Publication of judicial decisions</b>	Article– 79 (Copyright Law)
<b>E- Commerce Directive (2000/31/EC)</b>	Law of 14 August 2000 relating to electronic commerce and trusted services, as amended
<b>Article 12/13/14 and 15 E-Commerce Directive</b>	Articles 60 to 63
<b>Articles 16 to 20 E-Commerce Directive</b>	Not transposed.
<b>DSM Directive (EU 2019/790)<sup>1017</sup></b>	Not transposed (as at September 2021).

<sup>1017</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>;



## 6.19.LV – Latvia – National legal summary<sup>1018</sup>

### 6.19.1. General legal framework

#### 6.19.1.1. National legislation on copyright<sup>1019</sup>

In Latvia, the Copyright Law of 11 May 2000, as last amended on 29 October 2020 (*Autortiesību likums*) is the national law that regulates the enforcement of copyright and related rights (the “Copyright Law”).<sup>1020</sup> Chapter XI of the Copyright Law regulates the protection of copyright and related rights in cases of infringement.

Other relevant laws in relation to copyright enforcement are as follows:

- the Civil Procedure Law (*Civilprocesa likums*)<sup>1021</sup> which provides special procedural rules, in its Chapter 30<sup>2</sup> on infringement and protection of intellectual property rights.
- - the Criminal Law (*Krimināllikums*).<sup>1022</sup>

In Latvia, copyright infringement is mainly considered as a civil law violation. Section 68(1) of the Copyright Law defines a copyright infringement as an activity by which the personal or economic rights of a rightsholder are violated; it also contains a non-exhaustive list of eight different examples of copyright infringement.

Additionally, some copyright infringements are considered as administrative offences, prosecuted by the police. According to Section 72 of the Copyright Law, the following activities, as far as they are illegal, shall be considered as an administrative offence: public performance; reproduction and reprographic reproduction; the right of making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; retransmission.

Furthermore, in some cases, Section 148 of the Criminal Law may apply, when copyright infringement has either: (i) caused substantial harm<sup>1023</sup> to rights and interests

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<sup>1018</sup> The country report on Latvia incorporates the feedback received from Linda Zommere and Ilona Pētersone (Ministry of Culture) during the checking round with the national competent institutions.

<sup>1019</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>1020</sup> <https://likumi.lv/ta/en/en/id/5138-copyright-law>.

<sup>1021</sup> <https://likumi.lv/ta/en/en/id/50500-civil-procedure-law>

<sup>1022</sup> <https://likumi.lv/ta/id/88966-kriminallikums>

protected by law; or (ii) been committed by an organised group; or (iii) been committed on a large scale.<sup>1024</sup>

There is no such criterion as “acting for profit” in Latvian criminal law. However, when deciding on the sanction (punishment) in a criminal matter, the court can impose a more severe penalty if the criminal offence was committed in aggravating circumstances, e.g. for the purpose of personal gain, as provided by Section 48 No. 11 of the Criminal Law. Depending on the circumstances of the case, the applicable punishment in a criminal matter may vary from a fine up to a custodial sentence.

### 6.19.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>1025</sup> has not been transposed to date in Latvia (as at June 2021). A group of experts is working on the amendments to the Copyright Law at the Ministry of Culture.

**Table 120. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	N/A
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	Copyright Law (Autortiesību likums); Trademark Law ( <i>Preču zīmju likums</i> ); <sup>1026</sup> Patent Law ( <i>Patentu likums</i> ); <sup>1027</sup> Civil Procedure Law ( <i>Civilprocesa likums</i> ) <sup>1028</sup>

<sup>1023</sup> In accordance with Section 20 of the Law on the Procedure for the Entry into Force and Application of the Criminal Law (*Par krimināllikuma spēkā stāšanās un piemērošanas kārtību*), substantial harm means one of the following consequences: (i) property loss suffered at the time of committing the criminal offence has not been less than the total of five minimum monthly wages specified in Latvia at that time, and also other interests (than those of the rightsholder) protected by law have been threatened; or (ii) property loss suffered at the time of committing the criminal offence has not been less than the total of ten minimum monthly wages specified in Latvia at that time; or (iii) interests other than those of the rightsholder protected by law have been significantly threatened.

<sup>1024</sup> For crimes committed on a large scale, Section 23 of the Law on the Procedures for the Entry into Force and Application of the Criminal Law clarifies that the total value of the property, the object of the offence, must be more than the total of fifty minimum monthly wages specified in Latvia at that time.

<sup>1025</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

<sup>1026</sup> <https://likumi.lv/ta/id/312695-precu-zimju-likums>

<sup>1027</sup> <https://likumi.lv/ta/en/en/id/153574-patent-law>

<sup>1028</sup> <https://likumi.lv/ta/en/en/id/50500-civil-procedure-law>



EU directive	National law
Information Society (InfoSoc) Directive	Copyright Law ( <i>Autortiesību likums</i> ) <sup>1029</sup>
E-Commerce Directive	Law on Information Society Services ( <i>Informācijas sabiedrības pakalpojumu likums</i> ) <sup>1030</sup>
Conditional Access Directive	Protected Services Law ( <i>Aizsargāta pakalpojuma likums</i> ) <sup>1031</sup>

Source: Latvian response to European Audiovisual Observatory standardised survey

## 6.19.2. National rules applicable to audiovisual sports content

### 6.19.2.1. Legal definitions of broadcaster and sports event organiser

Section 1 No. 7 of the Electronic Mass Media Law (*Elektronisko plašsaziņas līdzekļu likums*)<sup>1032</sup> provides for a definition of “electronic mass medium”, which has replaced the concept of “broadcaster” in Latvia. An electronic mass medium is a private person (a natural or legal person governed by private law or an association of such persons) to whom a broadcasting permit or a retransmission permit has been issued in accordance with the procedures set out in laws and regulations or who, in accordance with this law, has submitted to the National Electronic Mass Media Council a notification of the provision of on-demand electronic mass media services.

On the other hand, the Sports Law (*Sporta likums*)<sup>1033</sup> provides for a legal definition of “sports events” in Section 1 No. 5, whereby a sports event can be a sports competition, a sports demonstration or any other activity in the field of sport. However, a sports training shall not be considered as a sports event. According to Section 15(1) of the Sports Law, any legal person or natural person with the capacity to act, as well as the state or local government institutions may be considered as a sports event organiser.

### 6.19.2.2. Legal protection related to sports events

The sports event itself does not fall under the concept of a protected work, as provided in Section 1 No. 2 of the Copyright Law, which defines a “work” as the result of an author’s creative activity in the fields of literature, science or art. Therefore, sports events are not

<sup>1029</sup> <https://likumi.lv/ta/id/5138-autortiesibu-likums>

<sup>1030</sup> <https://likumi.lv/ta/en/en/id/96619-law-on-information-society-services>.

<sup>1031</sup> <https://likumi.lv/ta/id/121193-aizsargata-pakalpojuma-likums>.

<sup>1032</sup> <https://likumi.lv/ta/en/en/id/214039-electronic-mass-media-law>.

<sup>1033</sup> Sports Law (*Sporta likums*), <https://likumi.lv/ta/en/en/id/68294-sports-law>.

protected as objects of copyright or related (or “neighbouring”) rights, and Copyright Law does not provide for protection for sports event organisers either.

Although there is no case law on this question, the wording of Section 47<sup>1</sup> of the Copyright Law suggests that sports event organisers are not protected by the provisions of related rights either, as in Latvia, only the following persons are holders of related rights: performers, phonogram producers, film producers and broadcasting organisations. However, as organisers of a sports competition, sports federations benefit from special rights linked to the access to and presence in the competition venue<sup>1034</sup> (i.e. a type of “house right”) based on which they can sell the authorisation for filming and broadcasting the event (referred to as the “data transmission rights” in the financial reports of sports federations).

If the sports event is recorded, the producer of the audiovisual recording holds related rights in the recording. According to Section 50 of the Copyright Law, film producers have exclusive rights in respect of the original of the film or copies thereof to: 1) distribute; 2) retransmit by cable; 3) make available to the public by wire or otherwise in an individually selected location and at an individually selected time; 4) lease, rent or publicly lend; 5) directly or indirectly, temporarily or permanently reproduce the original of the film or copies of it.

Furthermore, broadcasters hold related rights in the sports event broadcast. According to Section 53<sup>1</sup> of the Copyright Law, broadcasting organisations, with respect to their broadcasts, shall have the exclusive rights: 1) to make broadcasts for a charge or in a location which is accessible to the public for a charge, or in locations where the owners or possessors use the broadcasts to attract customers; 2) to transmit a signal carrying the programme with the assistance of any other broadcasting organisation, cable operator, or some other distributor; 3) to acquire any photographic image of the screen from a broadcast if it is not done for personal use, and any duplication or distribution of such photographs; 4) to retransmit broadcasts by cable; 5) to make a broadcasts or the fixation thereof available to the public by wire or otherwise so that they are available in an individually selected location and at an individually selected time; 6) to fix any broadcasts by means of sound or video recording equipment, direct or indirect, temporary or permanent reproduction of a fixation of a broadcast and any distribution of such fixations.

Regarding the entitlement to take legal action in the case of infringement of broadcasting or online transmission of a sports event, according to the Copyright Law, only the holders of copyright and related rights, such as broadcasters, or other rightsholders or their representatives such as collective management organisations (Section 69 of the Copyright Law) are entitled to do so. Sports event organisers – as long as they only have contractual rights – cannot rely on the provisions of the Copyright Law.

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<sup>1034</sup> See Section 15 of the Sports Law, *op. cit.*



### 6.19.2.3. Other specific rules applicable to sports events

There are no other specific rules applicable to sports events in Latvian law. General provisions of the Copyright Law apply in the field of audiovisual sports content. There are no specific rules about the use of sports content in social media in Latvia.

**Table 121. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
Broadcaster	Yes	Related rights
Sports event organiser	Yes	Contractual rights

*Source: Latvian response to European Audiovisual Observatory standardised survey*

## 6.19.3. Remedies and sanctions applicable in the event of infringement

### 6.19.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports contents.

All the measures, including provisional measures and the measures for preserving evidence, as well as the right to information and the final injunctions, as provided by the Civil Procedure Law and the Copyright Law, can also be applied in cases concerning online piracy of audiovisual sports content.

In particular, Section 69<sup>1</sup> of the Copyright Law provides for a general set of sanctions, remedies, and injunctions available to rightsholders and other subjects, regardless of the type of copyright infringement and, in particular: (1) to require of the person who has committed the illicit act to recognise the rights of the rightsholders; (2) to prohibit the use of their works; (3) to require that the infringer renew the prior existing status before the infringement and that the illegal activity be stopped or that the creative work not be threatened; (4) to require that the person stop the activities that are considered to be preparation for illegal use of the objects of copyright or related rights; (5) to require that the infringer compensate the losses and moral damages incurred by the rightsholders; (6) to require the destruction of infringing copies; (7) to require that intermediaries whose service is used to infringe rights, or who make such infringement possible, applies relevant measures for the purpose of preventing the users from being able to perform such infringements. If the intermediary does not apply relevant measures, the copyright or related rightsholder or his/her representative has the right to bring an action against the intermediary.



Although all of these instruments can be invoked directly, in cases concerning online piracy of audiovisual sports content, the ones provided in (2), (5) and (7) of Section 69 (1) might have the most practical significance.

Measures for preserving evidence (Article 7 IPRED) have been implemented by amending Section 100 of the Civil Procedure Law, by granting the right – without the other party having been heard (*ex parte*) – to file an application for measures for preserving evidence also to the holders of intellectual property rights.

In terms of procedures, Sections 250<sup>10</sup> to 250<sup>12</sup> of the Civil Procedure Law regulate the procedure and application by the court of provisional and precautionary measures available to rightsholders in the case of infringement of intellectual property rights. Section 250<sup>16</sup> regulates the right to information and Section 250<sup>17</sup> provides for the injunctions that courts can impose in a judgment once the fact of an infringement has been proven, such as: 1) to stop and prohibit the use of the unlawful objects of intellectual property rights; 2) to stop and prohibit measures which are recognised as preparation for the unlawful use of objects of intellectual property rights; 3) to stop and prohibit the provision of services, used for infringement activities; 4) to reimburse the damages incurred due to the infringement. In addition, a court may specify one or several of the following measures to be performed on the account of the infringer: 1) to cancel or withdraw completely the infringing goods (infringing copies) from trade; 2) to destroy the infringing goods (infringing copies); 3) to cancel or withdraw completely from trade the facilities and materials used or intended to be used for making the infringing goods (infringing copies) if the owner thereof knew or should have known from the circumstances that such facilities and materials have been used or intended for the performance of unlawful activities; 4) to fully or partially publicise the court judgment in newspapers and other mass media.

All these measures could be directly used in cases concerning online piracy of audiovisual sports content, although there is no case law on the matter yet in Latvia.

As regards the calculation of damages, Section 691 of the Copyright Law establishes that a rightsholder may calculate his/her damages as factual losses according to civil law (compensatory damages) or he/she can alternatively apply for a licence or royalty fee. When calculating compensatory damages, the infringer's profit may be also taken into consideration.

Concerning the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive), Section 1 No. 19 (providing for a definition of technological measures) and Section 68<sup>1</sup> Nos. 4 and 5 provide that a copyright infringement is constituted in the case of: (i) the destruction or circumvention of effective technological measures, or; (ii) the manufacture, importation, distribution, sale, lease, advertisement or use for other commercial purposes of such devices or the components thereof, as well as the provision of such services which are directed towards the circumvention of effective technological measures or the destruction thereof.



All sanctions and remedies provided in Section 69<sup>1</sup> are also available in these cases. Furthermore, Section 7 of the Protected Services Law provides for administrative fines in the case of infringing activities as defined by Article 4 of the Conditional Access Directive. However, the aforementioned law does not provide for any specific directly invocable sanctions in cases concerning online piracy of audiovisual sports content.

#### 6.19.3.2. National bodies with competences on copyright enforcement

Copyright infringements can be prosecuted by the state police as soon as the infringements are considered as administrative offences or crimes, i.e. when the infringement has caused substantial harm to rights and interests protected by law, or when it has been committed by an organised group, or on a large scale, according to Section 148 of the Criminal Law. Thus, for example, in the case of illegal communication to the public of sports broadcasts (e.g. by transmission of sports broadcasts in cafés without having a licence) the police can impose an administrative fine on the owner of the premises.

With specific reference to online copyright infringement, the police used to contact internet service providers (ISPs) during the investigation of the case, asking them to block illegal domains or Internet Protocol (IP). Lately this practice has been stopped by some courts. It has been argued that the police has been acting *ultra vires* and that only the National Electronic Mass Media Council can order the termination of the illegal retransmission of audiovisual programmes, as explained below (for details see also section 6.19.3.7. on criminal sanctions).

Since 2019, retransmissions of audiovisual content are actively monitored by the National Electronic Mass Media Council, in order to control illegal retransmissions of audiovisual programmes (i.e. without a retransmission licence) in Latvia. The primary purpose of this monitoring is to protect Latvian information space and public opinion, but it also applies to every illegal retransmission, including sports event broadcasts and online transmissions.<sup>1035</sup> If illegal online retransmissions take place, the National Electronic Mass Media Council shall take a decision to order the termination of the retransmission (or the issuing of the corresponding licence) within 15 days (Section 21<sup>7</sup> of the Electronic Mass Media Law). If retransmission is not terminated within this time period, the Council shall fulfil the function of a supervisory body and take other actions provided in law and regulation (Section 21<sup>8</sup> (1)). If it is not possible for the Council to implement this termination order, it has the right to take a decision (a general administrative statement) by which access to those websites available in Latvia which retransmit audiovisual programmes without a retransmission permit is prohibited, by prohibiting the use of the domain names thereof for a period of time of up to six months (Section 21<sup>8</sup> (2)). This decision shall be enforced by ISPs.

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<sup>1035</sup> This procedure applies to online copyright infringement as long as it is a part of an illegal retransmission. However, the procedure does not aim to monitor copyright infringements as such.





### 6.19.3.3. Codes of conduct and Memorandums of Understanding

In Latvia, a Memorandum of Understanding (MoU) has been signed between the association “For legal content”, the Latvian internet Association, the National Electronic Mass Media Council, the Public Utilities Commission and the State Revenue Service. Under the MoU, the Parties have identified the following priority objectives:

- to achieve a full understanding by the responsible competent institutions, officials and the government of the problems of illegal broadcasting and illegal content service providers and the damage caused to the state budget and Latvian society;
- to raise Latvian society’s understanding of the harm caused by illegal television and internet content providers and to raise the society’s awareness of responsibility;
- to increase the number of registered broadcasting service providers and internet content providers;
- within the framework of the MoU and the competence of each party, to reduce the number of households using illegal television service providers.

In 2017, a cooperation agreement was also concluded between the state police and the association “For legal content”, aiming at reducing the activities of illegal television programme distribution service providers, as well as the activities of illegal film distributors in Latvia.

### 6.19.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

According to Section 69<sup>1</sup>(7) of the Copyright Law, a rightsholder may require that an ISP apply relevant measures to cease an infringement of copyright. This procedure is regulated neither by law nor by court case (of which there are none); it is based on the principle of voluntariness. In some very rare cases, Latvian ISPs have reacted to a notice sent by a rightsholder, but generally they avoid complying with it by arguing that they would otherwise put themselves at a disadvantage compared to their competitors, who did not take down the content in question. In Latvia, only police intervention is considered effective among rightsholders.

### 6.19.3.5. Removal and blocking orders

Two typologies of injunctions are available: (i) a preliminary injunction; (ii) an injunction on the merits of the case. A preliminary injunction is a provisional (or interim) measure which needs to be confirmed in proceedings on the merits, otherwise it ceases to have effect.



Both types of injunction procedures are regulated by the Civil Procedure Law, in particular its Chapter 30,<sup>2</sup> which provides for special procedural rules for cases regarding the infringement and protection of intellectual property rights. Furthermore, the procedure for an application for preliminary measures is regulated under Sections 250,<sup>10</sup> 250,<sup>11</sup> and 250<sup>12</sup> of the Civil Procedure Law.

According to these provisions, the rightsholder can request that the court impose preliminary remedies at any stage of the process, even before the legal action is brought. However, in this case, the request must be done within three months of obtaining knowledge of the infringement. According to case law and legal doctrine, the following four conditions pursuant to Sections 250<sup>10</sup> to 250<sup>12</sup> of the Civil Procedure Law have to be fulfilled cumulatively in order for the court to issue a preliminary measure: (i) a sufficient ground to believe that the applicant holds the rights; (ii) a sufficient ground to believe that a copyright infringement has taken place or will take place; (iii) a sufficient ground to believe that the rightsholder would suffer significant damage if no injunction were imposed; (iv) the balance of interests of the parties is in favour of an injunction.<sup>1036</sup> If the request for the imposition of a preliminary remedy has been granted by the court, the judge shall set a time limit of maximum 30 days to bring the action before the court, otherwise the preliminary remedy is withdrawn. The court may also ask the plaintiff to secure possible losses, which may be caused to the defendant, by paying a deposit or providing an equivalent guarantee.

Final injunctions may also be granted by the court, as provided for in Section 250<sup>17</sup> (1) of the Civil Procedure Law, if the fact of an infringement has been proven, to stop and prohibit the use of unlawful copyright-protected objects, or to stop and prohibit illegal acts or services used in order to infringe intellectual property rights.

There is no special procedure or statutory regulation for blocking injunctions in Latvian law. Blocking injunctions can be issued either as preliminary measures or in the proceedings on the merits according to the general provisions.

Regarding the use of injunctions in cases of online piracy of audiovisual sports content, no judicial decisions have been reported in Latvia. Neither are there any judicial decisions applying blocking or other injunctions in the case of any other kind of online piracy. In theory, online piracy of live sports events could be addressed by rightsholders either by applying a notice and take-down request according to Section 69<sup>1</sup> (7) of the Copyright Law or by filing an application for preliminary measures according to the above-mentioned Sections 250<sup>10</sup>, 250<sup>11</sup> and 250<sup>12</sup> of the Civil Procedure Law. In urgent cases (if delay may cause irreversible harm to the rightsholder) the court shall decide on preliminary measures no later than on the day after receipt of the application.

One of the problems that may arise in the context of live sports events may be linked to proving copyright infringement, due to the intangible and live nature of this type of infringement. In the absence of case law, it is also unclear how much evidence is

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<sup>1036</sup> Chamber of Civil Cases of the Supreme Court, Judgment of 21 June 2012, Case No. C01148412, not published.

required by the courts in order to grant preliminary measures. In one case in 2014, concerning live hockey games, the broadcaster holding the rights had recorded the fact of piracy through a bailiff and was willing to file an application for preliminary measures against the cable operator in question. However, the case did not reach court as the parties reached a settlement.

#### 6.19.3.6. Measures against end-users

Under Latvian law, measures against end-users are not applied.

#### 6.19.3.7. Criminal sanctions

As regards criminal proceedings, Section 148 of the Criminal Law provides that a rightsholder may file a complaint with the police as long as he/she is able to quantify and prove the substantial harm to his/her rights and interests.

For some period of time, it was relatively common practice for the police to contact the ISPs during the investigation of the case, asking them to block specific domains or IP addresses. There are court decisions recognising these requests as binding (see Latgale Suburb District Court in Riga (first instance court) judgment of 26 April 2018, Case No. 129025018/21). However, the legal status of such requests has lately been questioned by other courts, classifying such requests as mere recommendations without any sanctions for ISPs for not following them (see the Regional Administrative Court judgment of 17 July 2020, Case No. A420173819). Indeed, in Latvia, the Criminal Procedure Law does not provide for a special provision allowing the police or the investigator of the case to request a blocking injunction.

With reference to criminal sanctions, Section 148 of the Criminal Law specifies when a copyright infringement can be considered as a crime and Section 48 of the Criminal Law individuates the aggravating circumstance for which the sanction consists in imprisonment.

**Table 122. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sport content copyright	No, national copyright law applies
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial bodies)	Specific competences of the Electronic Mass Media Council since 2019 in relation to illegal retransmissions



Specific features on sports	Description
Entitlement to take legal action	Yes, copyright holders and related rightsholders or their representatives
Codes of conduct	Yes, an MoU has been implemented
Specific proceedings	No
Specific remedies	No

Source: Latvian response to European Audiovisual Observatory standardised survey

**Table 123. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	Yes, aggravating circumstances
Removal and blocking injunctions	Yes
Dynamic and/or live blocking injunctions	Not mentioned in national law; never applied
De-indexing injunctions	Not mentioned in national law; never applied
Damages and orders to cease and desist	Yes
Administrative offence and remedies	Yes
Notice and take-down procedures	Yes

Source: Latvian response to European Audiovisual Observatory standardised survey

#### 6.19.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions in relation to online infringement of audiovisual sports content.

**Table 124. Relevant case law related to copyright infringements of audiovisual sports content**

Content	Substance of the decision	Decisions
Communication to the public	If a broadcaster acquires the exclusive right to broadcast, a licence to show the broadcast event is necessary.	N/A
Hosting providers' knowledge and awareness of illegal activity	N/A	N/A
Notice and take-downs	The case was dismissed because a prior action against the infringer was necessary. <sup>1037</sup>	
Measures against end-user	N/A	N/A
Criminal sanctions	N/A	N/A

Source: Latvian response to European Audiovisual Observatory standardised survey

#### 6.19.4.1. Communication to the public

In Latvia, there is only one national case related to the notion of communication to the public and copyright infringement of audiovisual sports content, which deals with the problem of illegal public viewing.

In 2018, there were a couple of administrative cases in Latvia,<sup>1038</sup> dealing with public viewing of a particular top-level boxing event (World Boxing Super Series) with the Latvian boxer Mairis Briedis. A broadcaster, belonging to the media company MTG, had acquired the exclusive right to broadcast this boxing competition in Latvia. Consequently, bars, cafés, and other public viewing premises were asked to acquire special sub-licences in order to show this boxing match publicly.

The police raided public places during the game and fined those café owners who had not acquired the licence. In subsequent administrative cases, the courts were mostly dealing with a question of whether the infringement had been properly established and sanctioned by the police or whether a group of alleged friends was supposed to constitute a public in the light of copyright law and the case law of the Court of Justice of the European Union.

<sup>1037</sup> Vidzeme Suburb District Court in Riga (first instance court) of 11 July 2019. This decision is not published and the grounds of the judgment are not known.

<sup>1038</sup> See for example Riga District Court, Judgment of 9 February 2018, Case No. 133018618.

#### 6.19.4.2. Online infringement of audiovisual sports content

No relevant national cases concerning online piracy of audiovisual sports content has been detected in Latvia. Furthermore, no legal actions initiated by sports event organisers have been reported.

#### 6.19.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

In Latvia, no case has been reported that would concern the condition of “actual knowledge” of illegal activity or awareness on the part of the hosting providers, as stipulated under Article 14 of the E-Commerce Directive.

#### 6.19.4.4. Notice and take-down requirements

With regard to notice and take-down requirements, there is only one judgment. The court dismissed a claim against an ISP, ruling that a rightsholder must take prior action against the infringer or the intermediary maintaining the website in question.<sup>1039</sup>

#### 6.19.4.5. Removal and blocking orders

Removals or blocking orders have not been applied for copyright law infringement.

#### 6.19.4.6. Measures against end-users ordered by the courts

In Latvia, blocking or suspending measures against end-users are not considered effective as IP addresses can easily be changed.

#### 6.19.4.7. Compensation criteria adopted by the courts

There is no compensation criterion applied by courts in order to compute damages to sports event broadcasters.

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<sup>1039</sup> Decision of the Vidzeme Suburb District Court in Riga (first instance court) of 11 July 2019. This decision is unpublished and the grounds of the judgment are not known.

However, according to Section 69.1 (2) (3) of the Copyright Law, rightsholders may calculate their damages as actual damages, including lost profits and consider the infringer's profits, or alternatively request the infringer to pay a licence or royalty fee.

The Supreme Court of Latvia indicated that the amount of compensation will usually be the amount that the rightsholder could receive for issuing a licence, in the case of assessing damages according to the licence fee method.

If the rightsholder does not issue appropriate licences (for example, he/she does not have a relevant practice or willingness to licence, either at all or to the defendant), the court must impose a hypothetical licence fee based on the amount of money a willing licensor would agree with a willing licensee.<sup>1040</sup>

#### 6.19.4.8. Criminal sanctions ordered by courts

Courts have not applied any criminal sanctions to online piracy of audiovisual sports content.

### 6.19.5. Reports and studies

In Latvia, reports or studies have been detected about online piracy of protected content, in particular:

- Sauka A. (2018), "The Amount of Illegal TV Market and Internet Content Usage in Latvia" (*Nelegālās maksas TV apraides apjoms un Interneta satūra lietošanas paradumi Latvijā*).<sup>1041</sup> This study reports that 75-80% of respondents implicitly admit that they illegally watch audiovisual content online, download or listen to music and movies.
- Gemius Audience (2020), "Audit of the Most Popular Torrent Download Sites and Research of Audience: Main Conclusions" (*Latvijas populārāko torrentu lejuplādes vietņu audits un auditorijas izpēte: galvenie secinājumi*).<sup>1042</sup> This survey was carried out from April to May 2020 and showed a huge increase in the use of illegal data download sites – torrents – in Latvia, this being explained by the national lockdown due to the Covid-19 pandemic.

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<sup>1040</sup> Judgment of the Supreme Court of 28 June 2018 in Case No. SKC-195/2018 (ECLI: LV: AT: 2018: 0628.C10061814.1.S), paragraph 12.4, available at <http://www.at.gov.lv/downloadlawfile/5487>.

<sup>1041</sup> <https://www.parlegalusaturu.lv/media/FINAL%20TV%20un%20Internets%20zinojums%202018.pdf>;  
[https://www.parlegalusaturu.lv/media/EN\\_TV%20un%20Internets%20zinojums%202018%20\\_EN.docx](https://www.parlegalusaturu.lv/media/EN_TV%20un%20Internets%20zinojums%202018%20_EN.docx).

<sup>1042</sup> <https://www.km.gov.lv/lv/media/201/download>; <https://www.world-today-news.com/a-study-was-conducted-on-the-use-and-audience-of-illegal-data-download-sites-in-latvia-press-release/>



- Sauka A. (2019), “Habits of Latvian smartphone users on use of copyright and related rights objects” (*Latvijas viedtālrunu lietotāju autortiesību un blakustiesību objektu izmantošanas paradumi*). The aim of this study was to reveal what kind of protected content is being used by smartphone users in Latvia and how often it is being used. The study also deals with the use of illegal content.<sup>1043</sup>

Furthermore, there are two reports considering the specific issue of illegal online transmission of sports events, in particular:

- Sauka A. (2018), “The volume of broadcasting of illegal pay television, and habits on use of internet content in Latvia” (*“Nelegālās maksas TV apraides apjoms un Interneta satura lietošanas paradumi Latvijā”*)<sup>1044</sup> (no English version available). In this study 65 % of respondents implicitly admit that they illegally watch sports programmes online;
- Sauka A. (2019), “Habits of Latvian smartphone users on use of copyright and related rights objects”, (*Latvijas viedtālrunu lietotāju autortiesību un blakustiesību objektu izmantošanas paradumi*).<sup>1045</sup> This study revealed that smartphones are the least used for reading books and watching sports broadcasts, i.e. 73.7% of the respondents have never watched a sports event via smartphone. According to this study 5.6% of respondents who implicitly admit that they illegally watch sports broadcasts online via their smartphone, do it at least once a week and 12.6% of respondents do it more than once a month.

Moreover, according to an informational report from the Ministry of Transport on proposals to improve the supervision of internet television service providers (15 December 2015),<sup>1046</sup> the following technologies are being used for illegal streaming of television programmes: set-top-boxes; over-the-top services.

Regarding business models, it is not atypical that in order to hide the true identity of the website administrators and to complicate investigative activities the domain of an illegal website is registered outside Latvia on a foreign server (e.g. “.us” as a top-level domain).

Non-internet solutions are also popular.

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<sup>1043</sup> [https://www.km.gov.lv/sites/km/files/media\\_file/latvijas20viedtalrunu20lietotaju20autortiesibu20un20blakustiesibu20objektu20izmantosanas20paradumi2020191.pdf](https://www.km.gov.lv/sites/km/files/media_file/latvijas20viedtalrunu20lietotaju20autortiesibu20un20blakustiesibu20objektu20izmantosanas20paradumi2020191.pdf), presentation available at

[https://www.km.gov.lv/sites/km/files/media\\_file/120prezentacija20viedtalruni20km20sauka1.pdf](https://www.km.gov.lv/sites/km/files/media_file/120prezentacija20viedtalruni20km20sauka1.pdf)

<sup>1044</sup> <https://www.parlegalusaturu.lv/media/FINAL%20TV%20un%20Internets%20zinojums%202018.pdf>

<sup>1045</sup> [https://www.km.gov.lv/sites/km/files/media\\_file/latvijas20viedtalrunu20lietotaju20autortiesibu20un20blakustiesibu20objektu20izmantosanas20paradumi2020191.pdf](https://www.km.gov.lv/sites/km/files/media_file/latvijas20viedtalrunu20lietotaju20autortiesibu20un20blakustiesibu20objektu20izmantosanas20paradumi2020191.pdf), presentation available at

[https://www.km.gov.lv/sites/km/files/media\\_file/120prezentacija20viedtalruni20km20sauka1.pdf](https://www.km.gov.lv/sites/km/files/media_file/120prezentacija20viedtalruni20km20sauka1.pdf)

<sup>1046</sup> <http://tap.mk.gov.lv/mk/tap/?pid=40365055>.





In a recent criminal offence case, which has been made public by the state police, the latter reported the discovery of a huge card sharing network in Riga and Balvi.<sup>1047</sup>

There are no studies describing the legal offer of online sports content in Latvia. However, the Ministry of Culture launched a platform containing lists of websites that offer digital content (music, film and television, e-books, video games and sports events) online and that can be considered legal according to criteria set by the Ministry of Culture.<sup>1048</sup>

Some general awareness campaigns have been conducted in Latvia:

- In 2018, the association "For legal content" in cooperation with the state police, the Patent Office and the Ministry of Culture implemented an extensive anti-piracy social campaign with regard to films, music, TV channels and live sports: "Don't lie to yourself – you are stealing!". The aim of the campaign was to raise public awareness that illegal use of online content on the internet, both video and audio, as well as the use of illegal TV offers, is an illegal act (namely a theft). The campaign used animations to demonstrate that the "everyone does it" argument could not stand up to scrutiny.
- In 2017, the association "For legal content" organised a public discussion entitled "Can a country with widespread piracy become a centre of innovation?". This discussion was held online and dealt with legal, factual, psychological, and emotional aspects of online piracy.

In addition, there are no associations of broadcasters or rightsholders that actively work to address the issue of online piracy of audiovisual sports content in Latvia. Nevertheless, the association "For legal content!" (*biedrība "Par legālu saturu!"*), founded in 2015 by several TV service providers and audiovisual content owners, addresses illegal broadcasting and online piracy of audiovisual content in general.<sup>1049</sup> The association is actively fighting against the distribution of TV and films without the permission of the producer or supplier and it also facilitates the legal broadcasting of audiovisual content in the telecommunications market, maintaining active cooperation with the competent authorities of Latvia, such as the police.

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<sup>1047</sup> <https://www.vp.gov.lv/lv/jaunums/pabeigta-izmeklesana-lieta-par-nelegalas-televizijas-izplatisanu-riga-un-balvos>.

<sup>1048</sup> <https://nemdrosi.lv/na/en/about>.

<sup>1049</sup> <https://www.parlegalusaturu.lv/en/>.

## 6.19.6. Data compilation

This country report is based on data compiled by Dr. Magda Papēde, LL.M., an attorney-at-law (*Rechtsanwältin*) at SCHULTZ-SÜCHTING Rechtsanwälte Hamburg, a boutique law firm focused on Intellectual Property, Copyright, Press, and Medicine Law.



## 6.19.7. Annex

**Table 125. Overview of relevant transposition measures**

EU directives	National law
Conditional Access Directive (98/84/EC)	Protected Services Law ( <i>Aizsargāta pakalpojuma likums</i> ) <sup>1050</sup>
InfoSoc Directive (2001/29/EC)	Copyright Law ( <i>Autortiesību likums</i> ) <sup>1051</sup>
Article 6 InfoSoc – Obligations as to technological measures	Section 1 No. 19 and Section 68 (1) Nos. 4 and 5
Article 8 InfoSoc – Sanctions and remedies	Section 69(1)
IPRED (2004/48/EC)	Copyright Law ( <i>Autortiesību likums</i> ); Trademark Law ( <i>Preču zīmju likums</i> ); <sup>1052</sup> Patent Law ( <i>Patentu likums</i> ); <sup>1053</sup> Civil Procedure Law ( <i>Civilprocesa likums</i> ) <sup>1054</sup>
Article 6 IPRED – Evidence	Not transposed, already existed in Section 93(2) of the Civil Procedure Law
Article 8 IPRED – Right of information	Section 250 <sup>16</sup> of the Civil Procedure Law
Article 10 IPRED – Corrective measures	Sections 250, <sup>10</sup> 250 <sup>11</sup> and 250 <sup>12</sup> of the Civil Procedure Law
Article 11 IPRED – Injunctions	Section 250 <sup>17</sup> (1) of the Civil Procedure Law and Section 69 (1) Nos. 2, 3, 4 and 7
Article 15 IPRED – Publication of judicial decisions	N/A
E-Commerce Directive (2000/31/EC)	Law on Information Society Services ( <i>Informācijas sabiedrības pakalpojumu likums</i> ) <sup>1055</sup>
Articles 12/13/14 and 15 E-Commerce Directive	Sections 10 and 11 of the Law on Information Society Services
Articles 16 to 20 E-Commerce Directive	N/A
DSM Directive (EU 2019/790)	Not transposed (as at June 2021)

<sup>1050</sup> <https://likumi.lv/ta/id/121193-aizsargata-pakalpojuma-likums>.

<sup>1051</sup> <https://likumi.lv/ta/id/5138-autortiesibu-likums>.

<sup>1052</sup> <https://likumi.lv/ta/id/312695-precu-zimju-likums>.

<sup>1053</sup> <https://likumi.lv/ta/en/en/id/153574-patent-law>.

<sup>1054</sup> <https://likumi.lv/ta/en/en/id/50500-civil-procedure-law>.

<sup>1055</sup> <https://likumi.lv/ta/en/en/id/96619-law-on-information-society-services>



## 6.20.MT – Malta – National legal summary<sup>1056</sup>

### 6.20.1. General legal framework

#### 6.20.1.1. National legislation on copyright<sup>1057</sup>

In Malta, the Copyright Act (Chapter 415) is the general act that regulates the scope and the enforcement of copyright and related rights.<sup>1058</sup> The Copyright Act is supplemented by the following Chapters of the subsidiary legislation:

- The Control of the Establishment and Operation of Societies for the Collective Administration of Copyright Regulations (Chapter 415.01)<sup>1059</sup>
- The Revival of Copyright and Neighbouring Rights (Protection) and Exhaustion of Distribution Rights (Extension) Regulations (Chapter 415.02)<sup>1060</sup>
- The Artists' Resale Right Regulations (Chapter 415.03)<sup>1061</sup>
- The Extension to Term of Protection (Neighbouring Rights) and Certain Permitted Uses of Orphan Works (Chapter 415.04)<sup>1062</sup>
- Certain Permitted Uses of Orphan Works Regulations (Chapter 415.05)<sup>1063</sup>
- The Functions of the Copyright Board Regulations (Chapter 415.06)<sup>1064</sup>
- Copyright and Related Rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes Regulation (Chapter 415.07)<sup>1065</sup>
- Copyright and Related Rights in the Digital Single Market Regulations (Chapter 415.08)<sup>1066</sup>

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<sup>1056</sup> The country report on Malta incorporates the feedback received from the Ministry for the Economy and Industry during the checking round with the national competent institutions.

<sup>1057</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>1058</sup> <https://legislation.mt/eli/cap/415/eng/pdf>.

<sup>1059</sup> <https://legislation.mt/eli/sl/415.1/eng/pdf>.

<sup>1060</sup> <https://legislation.mt/eli/sl/415.2/eng/pdf>.

<sup>1061</sup> <https://legislation.mt/eli/sl/415.3/eng/pdf>.

<sup>1062</sup> <https://legislation.mt/eli/sl/415.4/eng/pdf>.

<sup>1063</sup> <https://legislation.mt/eli/sl/415.5/eng/pdf>.

<sup>1064</sup> <https://legislation.mt/eli/sl/415.6/eng/pdf>.

<sup>1065</sup> <https://legislation.mt/eli/sl/415.7/eng>.

<sup>1066</sup> <https://legislation.mt/eli/sl/415.8/eng>.

Furthermore, some additional legislation is also relevant regarding the enforcement of copyright:

- The Intellectual Property Rights (Cross-Border Measures) Act (Chapter 414)<sup>1067</sup>
- The Enforcement of Intellectual Property Rights (Regulation) Act (Chapter 488)<sup>1068</sup>
- the Permitted Use of Certain Works and Other Subject Matter Protected by Copyright and Related Rights for the Benefit of Persons who are Blind, Visually Impaired or Otherwise Print-Disabled Order (Chapter 460.36)<sup>1069</sup>
- The Police Licences and the Protection of Copyright Regulations (Chapter 128.03)<sup>1070</sup>
- The Criminal Code (Chapter 9)<sup>1071</sup>
- The Broadcasting (short news reporting) Regulations (SL 350.28).

In Malta, copyright infringement is mainly considered as a civil law violation. In some instances, it can also be considered as a criminal offence, in particular where certain infringements occur 1) in the exercise of any trade or in the course of business; or 2) with a view to gain (for the perpetrator himself/herself or for any other person); or 3) with intent to cause loss to, or to prejudice another person.<sup>1072</sup>

#### 6.20.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>1073</sup> was transposed into national legislation in June 2021 by means of the Copyright and Related Rights in the Digital Single Market Regulations (Chapter 415.08).

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<sup>1067</sup> <https://legislation.mt/eli/cap/414/eng/pdf>.

<sup>1068</sup> <https://legislation.mt/eli/cap/488/eng/pdf>.

<sup>1069</sup> <https://legislation.mt/eli/sl/460.36/eng/pdf>.

<sup>1070</sup> <https://legislation.mt/eli/sl/128.3/eng/pdf>.

<sup>1071</sup> <https://legislation.mt/eli/cap/9/eng/pdf>.

<sup>1072</sup> This is regulated by Article 298 B of the Criminal Code. The following infringing activities are covered by the Criminal Code: (a) printing, manufacturing, duplicating or otherwise reproducing, or (b) selling, distributing or otherwise offering for sale or distribution, (c) possession, custody or control of any such article or other thing with a view to carrying out any of the abovementioned acts. It should be noted that proceedings under this article of the Criminal Code may only be commenced on the complaint of the injured party.

<sup>1073</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.



**Table 126. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	SL 415.08 Copyright and Related Rights in the Digital Single Market Regulations
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	Chapter 488 of the Enforcement of Intellectual Property Rights (Regulation) Act <sup>1074</sup>
<b>Information Society (InfoSoc) Directive</b>	Chapter 415 of the Copyright Act <sup>1075</sup>
<b>E-Commerce Directive</b>	Chapter 426 of the Electronic Commerce Act (Laws of Malta) <sup>1076</sup>
<b>Conditional Access Directive</b>	Chapter 399 of the Electronic Communications (Regulation) Act <sup>1077</sup>

Source: Maltese response to European Audiovisual Observatory standardised survey

## 6.20.2. National rules applicable to audiovisual sports content

### 6.20.2.1. Legal definitions of “broadcaster” and “sports event organiser”

In Malta, a definition of “broadcaster” is provided in Article 25(1) of the Electronic Communications (Regulation)<sup>1078</sup> Act (Chapter 399), which transposes parts of the Conditional Access Directive, as follows:

*the natural or legal person who has editorial responsibility for the composition of television programme services for reception by the general public and transmits them, or has them transmitted, complete and unchanged, by a third party.*

In the laws of Malta, a further definition of broadcaster is also given in Article 16G of the Broadcasting Act (Chapter 350)<sup>1079</sup> as follows: “broadcaster means a media service provider of either radio or television broadcasts, or of both”.

There is no specific definition of “sports event organiser” under Maltese law. Under the Commercialisation of Sports Facilities Regulations (Chapter 455.12),<sup>1080</sup> a “sport organisation” is defined as “a national association, national federation, football club or

<sup>1074</sup> <https://legislation.mt/eli/cap/488/eng/pdf>.

<sup>1075</sup> <https://legislation.mt/eli/cap/415/eng/pdf>.

<sup>1076</sup> <https://legislation.mt/eli/cap/426/eng/pdf>.

<sup>1077</sup> <https://legislation.mt/eli/cap/399/eng/pdf>.

<sup>1078</sup> <https://legislation.mt/eli/cap/399>.

<sup>1079</sup> <https://legislation.mt/eli/cap/399/eng>.

<sup>1080</sup> <https://legislation.mt/eli/sl/455.12/eng/pdf>.

aquatic sports club, registered as a sportsperson in the Register of Sports Persons according to Part VII of the Act”.<sup>1081</sup>

#### 6.20.2.2. Legal protection related to sports events

Sports events as such do not constitute creations or intellectual works and thus cannot be protected by copyright, as ruled by the Court of Justice of the European Union (CJEU) in the *Football Association Premier League* case.<sup>1082</sup> However, in the same judgments, the CJEU also ruled that member states can grant some type of protection to sports events with a “unique and original character” and adopt legislation to protect sports events. Malta has not adopted any specific legislative measure to protect sports event organisers as such. Therefore, the protection of sports event organisers is based on an amalgam of contractual rights linked to the venue, that allows them to impose conditions on the media and other parties in return for permission to enter.<sup>1083</sup> Rights in relation to the audiovisual recordings and the broadcasts of the sports event would result from the contract between the sports event organiser and a party awarded the relevant contract to record/broadcast the event.

Furthermore, the broadcasting organisations (i.e. those that obtained the rights to broadcast a sports event under contract from the event organiser) would then be afforded protection under neighbouring (or “related”) rights. Broadcasters in general are protected under Article 17(1) of the Copyright Act (Chapter 415), which provides for the exclusive right to authorise or prohibit any of the following acts: (a) the fixation of their broadcasts or initial cable transmissions; (b) the direct or indirect, temporary or permanent reproduction by any means or form in whole or in part of fixations of their broadcast or initial cable transmissions; (c) the distribution of fixations of their broadcasts or initial cable transmissions; (d) the rebroadcasting of their broadcasts as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee; (e) the making available to the public of fixations of their broadcast or initial cable transmissions by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them. Under the same article, a broadcasting organisation does not have the right provided in (a) above when it merely retransmits by cable the broadcasts of broadcasting organisations.

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<sup>1081</sup> <https://legislation.mt/eli/cap/455/eng/pdf>.

<sup>1082</sup> *Football Association Premier League v. QC Leisure and Karen Murphy v. Media Protection Services Limited* (C-403/08 and C-429/08).

<sup>1083</sup> As indicated in the WIPO article “Intellectual property and the specificity of sports”, a broadcast or transmission of content from the venue, irrespective of the sports event itself being a copyrightable work, will become a copyrighted work upon recording or transmission. The sports rights owner will usually obtain an assignment of the copyright in the signal from the media company both for archive and anti-piracy purposes, so the sports event organiser will end up owning intellectual property (IP) rights. See at [https://www.wipo.int/wipo\\_magazine/en/2019/02/article\\_0008.html](https://www.wipo.int/wipo_magazine/en/2019/02/article_0008.html).



Broadcasters and other rightsholders (such as those being awarded rights to record the event, holders of trademarks, holders of any rights in musical, literary, or other audiovisual works being illegally transmitted together or as part of the illegal transmission of the sports event) would be entitled to take legal action in the case of illegal broadcasting or illegal online transmission of a sports event. A sports event organiser may have a right to take action, but not directly under an infringement of intellectual property laws.

### 6.20.2.3. Other specific rules applicable to sports events

No other specific legal protection applies to sports event organisers in Malta. There are no rules that are provided under Maltese law concerning the use of sports content in social media.<sup>1084</sup>

**Table 127. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
Broadcaster	Yes	Related rights
Sports event organiser	No	Contractual rights

Source: Maltese response to European Audiovisual Observatory standardised survey

## 6.20.3. Remedies and sanctions applicable in the event of infringement

### 6.20.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

According to Article 42(1) of the Copyright Act, copyright, related rights and *sui generis* rights are infringed by any person who, without a licence from the rightsholder:

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<sup>1084</sup> The only rules which relate to video-sharing platforms and user-generated content are those which have been included in part III B and C of the Broadcasting Act (Chapter 350) transposing Directive (EU) 2018/1808 (the Audiovisual Media Services Directive). These laws introduced regulation of video-sharing platform services but in relation to provisions against terrorism, child pornography, racism and xenophobia. Infringement of IP rights is not specifically mentioned.





- a) does or causes another person to do, an act which is protected by copyright, related rights or *sui generis* rights;
- b) imports into Malta for commercial use, or by way of trade exhibits in public and is in possession of or manufactures, offers or exposes for sale or hire, an article which is protected by copyright, related rights or *sui generis* rights;
- c) does anything which circumvents any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he/she is pursuing that objective;
- d) imports, distributes, sells, rents, advertises for sale or rental, or possesses for commercial purposes, devices, products or components which: i) are for the purpose of circumvention of, or ii) have only a limited commercially significant purpose or use other than to circumvent, or iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of, any effective technological measures;
- e) promotes, advertises or markets a service which serves for the purpose of circumvention of any effective technological measures;
- f) knowingly performs any of the following acts: i) the removal or alteration of any electronic rights management information; or ii) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected under the Copyright Act from which electronic rights management information has been removed or altered without authority.

The copyright is infringed on condition that such a person must know, or have reasonable grounds to know, that by so doing he/she is inducing, enabling, facilitating, or concealing an infringement of any copyright or any related right, or of the *sui generis* rights as provided by the Copyright Act, provided that any of these items of electronic rights management information (i) is associated with a copy of a copyright work under the terms of the Copyright Act; or (ii) appears in connection with the communication to the public of a copyright work under the terms of the Copyright Act, or (iii) is covered by a *sui generis* right under the terms of the Copyright Act.

The procedures, measures and remedies, including measures for the preservation of evidence, as well as the right of information and injunctions as provided by the IPRED were transposed into the Enforcement of Intellectual Property Rights (Regulation) Act (the IP Enforcement Act)<sup>1085</sup>. Any of these measures may be directly used in cases concerning online piracy of audiovisual sports content.

Furthermore, sanctions and remedies are set out in Article 43 of the Copyright Act (Chapter 415), which provides that the infringer shall be liable: (1) to the payment of damages; or (2) to the payment of a fine to be determined in accordance with a scale of fines to be prescribed by the Minister, as the Civil Court, First Hall may deem proper,

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<sup>1085</sup> <https://legislation.mt/eli/cap/488/eng/pdf>.



having regard to the circumstances of the case; and (3) to the restitution of all the profit derived from the infringement. If the defendant proves that at the time of the infringement, he/she was not aware and could not reasonably be expected to be aware that copyright, related rights or *sui generis* rights subsisted in the work to which the action relates, the court shall not condemn him/her to the restitution of the profit. Additionally, the Civil Court, First Hall, may also award additional damages as the circumstances of the case may require as per Article 43(2). On application of the plaintiff, the court may also order that all the infringing articles still in possession of the defendant be delivered to the plaintiff.

The measures used to stream online sports content illegally may be considered to override access control or protection processes as defined in the Copyright Act, and thus fall within the activities caught by Articles 42 and 43 of the Copyright Act. The sanctions contemplated by Article 43 would be applicable.

Concerning more specifically the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive), in addition to the infringing acts described in Article 42 (1) of the Copyright Act,<sup>1086</sup> Article 25 of the Electronic Communications (Regulation) Act (Chapter 399), which transposes Articles 4 and 5 of the Conditional Access Directive, deals with the legal protection of services based on or consisting of conditional access. In a definition similar to that contained in the Conditional Access Directive, an “illicit device” is defined as any equipment, software or arrangement designed or adapted to give access in an intelligible form to one of the services constituting a protected service without the authorisation of the service provider. A protected service refers to any of the following services when provided against remuneration and on the basis of conditional access: (i) a television programme; (ii) radio broadcasting services including radio programmes intended for reception by the public, transmitted by wire or over the air, including by satellite; (iii) information society services offered by electronic means, at a distance and at the individual request of the recipient of the services; or (iv) the provision of conditional access to the above services considered as a service in its own right.

Article 25(2) states that if a person is found guilty of manufacturing, producing, importing, distributing, selling, renting, possessing, installing, maintaining, replacing, commercially promoting, marketing, or advertising illicit devices, he/she shall be liable to imprisonment for a term not exceeding one year, or to a fine of EUR 25 000, or to both such fine and imprisonment. In the case of such proceedings, where a person is found guilty of infringing Article 25(2), the Maltese courts could order the Commissioner of Police to destroy/destroy the illicit devices.

Article 25(4) provides that if the interests of a provider of a protected service are affected by any act mentioned under Article 25(2), such a provider has, against the perpetrator, the right to (a) take a civil action for damages, (b) demand a “warrant of prohibitory injunction” to obtain provisional protection of his/her interests (see further

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<sup>1086</sup> Article 2(1) of the Copyright Act also provides the relevant definitions for “technological measures”.

details under section 6.20.3.5. of this country report) and (c) demand an order from the Maltese courts for the destruction or disposal outside commercial channels of illicit devices.

Audiovisual sports content could fall within the definition of a “protected service”, which could be, for example, pay-per-view and encrypted television as well as internet sites which charge for access. Therefore, one might argue that the sanctions under Article 25(2) of Chapter 399 can apply in the event that illicit devices are used for or to aid the illegal transmission of audiovisual sports content. It would be important to note, however, that this proof of illicit commercial activity is not always easy to establish in relation to particular ‘devices’ (for example blank smart cards that are programmed directly by the consumer). Furthermore, other limitations of this legislation relate to the fact that it does not apply to the use of lawful devices without respect for territorial restrictions.

#### 6.20.3.2. National bodies with competences on copyright enforcement

There is no national authority (e.g. administrative body) other than judicial bodies with specific competences to address copyright infringement in Malta.

#### 6.20.3.3. Codes of conduct and Memorandums of Understanding

There is no code of conduct or Memorandum of Understanding relating to the enforcement of intellectual property rights and the fight against online piracy adopted either by public or private entities in Malta.

#### 6.20.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

Article 21 of the Electronic Commerce Act states:

*21. (1) Where an information society service is provided, and such service consists in the storage of information provided by a recipient of the service, the provider of that service shall not be liable for damages for the information stored at the request of a recipient of the service.*

*Provided that:*

*(a) the provider does not have actual knowledge that the activity is illegal and is not aware of facts or circumstances from which illegal activity is apparent;*

*or*

*(b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.*



*(2) Sub-article (1) shall not apply when the recipient of the service is acting under the authority or the control of the provider of the service.*

#### 6.20.3.5. Removal and blocking orders

Under Article 873(1) of the Maltese Code of Organisation and Civil Procedure a warrant of prohibitory injunction can be filed in order to restrain a person from doing anything whatsoever which might be prejudicial to the person suing out the warrant.

Nothing in the law would prevent a prohibitory injunction from being filed against: (i) those persons manufacturing, producing, importing, distributing, selling, renting, possessing, installing, maintaining, replacing, commercially promoting, marketing, or advertising illicit devices; (ii) those persons providing the illegal transmission of audiovisual sports content; and (iii) internet service providers – considered as gatekeepers of the internet.

The warrant of prohibitory injunction is classified as a “precautionary warrant”, namely, a class of warrants intended to safeguard an applicant’s rights provisionally, until such time as a final judgment is obtained in relation to the subject matter. As such, the warrant of prohibitory injunction is subject to the general requirements for precautionary measures, including the requirement for the applicant to bring an action in court in order to confirm the right being claimed.

Article 843(1) of Chapter 12 prescribes a limit of 20 days from the issue of the warrant for the filing of the court action. Furthermore, in the case of failure to bring such an action, Article 843(2) of Chapter 12 stipulates that the effects of the warrant shall cease, and the person shall be liable for all damages and interest, and also a penalty will apply if there are no valid reasons.

Furthermore, under Article 6 of the IP Enforcement Act (Chapter 488), the competent court may, even before the commencement of proceedings on the merits of the case, upon an application by a person who has filed reasonably available evidence to support his/her claim that his/her intellectual property right has been infringed or is about to be infringed, order such prompt and effective provisional measures as it considers appropriate to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. Such a measure may include a detailed description, with or without the taking of samples or the physical seizure of the infringing goods and, in appropriate cases, the materials and implements used in the production and/or distribution of said goods and the documents relating thereto. The competent court may also, if it considers it necessary, order that such measures be taken without the other party having been heard, in particular where any delay is likely to cause irreparable harm to the rightsholders or where the court considers that there is an evident risk of the evidence being destroyed.

It should be noted that, as mentioned, the warrant of prohibitory injunction is a “precautionary warrant” and requires the applicant to bring an action in court, if he/she



has not already done so, in order to confirm the right being claimed. To date no such action in court has been taken with respect to the warrant described above.

The procedure for the filing of a warrant of prohibitory injunction is regulated by Article 873 *et seq.* of the Code of Organisation and Civil Procedure. An injunction is generally requested through the filing by a claimant of a sworn application containing the details and source of the claim being secured. The application is generally filed before a court of first instance with general civil law jurisdiction, known as the “Civil Court, First Hall”. This is not a specialised court; however, cases relating to intellectual property matters tend to be assigned to one particular judge. As mentioned earlier, the warrant of prohibitory injunction is a “precautionary warrant” and as such requires the applicant to bring an action in court to confirm the right being claimed. Nonetheless, the court may initially issue provisionally a warrant for a short period under conditions which it deems necessary according to the circumstances of the case and decide about the matter definitively at a later stage after having heard all the necessary evidence. The application must be served on the party against whom it is issued. The receiving party must then file a reply within ten days (or within a shorter period in urgent cases). The court must, after appointing the application for hearing, decide to take a decision on the merits, within the shortest time possible but not any later than one month from the day when the warrant has been filed and confirmed on oath and the parties duly served.

#### 6.20.3.6. Measures against end-users

Maltese national law does not provide any rules related to measures against end-users.

#### 6.20.3.7. Criminal sanctions

Regarding the criminal procedure, the Executive Police can file a court case before the competent Court of Magistrates. The Cyber Crime Unit of the Malta Police Force provides technical assistance to other police departments in the detection, investigation and prosecution of crime that takes place over the internet or using a computer. The Court of Magistrates is also a court of general criminal law jurisdiction. An appeal against a decision of the court can be made to the Court of Criminal Appeal.

Article 298 B of the Criminal Code regulates cases in which copyright infringement is considered a crime. The infringing activities covered by the Criminal Code with respect to “any article or other thing in violation of the rights of copyright protected by or under Maltese law” are any of the following: (a) printing, manufacturing, duplicating or otherwise reproducing; or (b) selling, distributing or otherwise offering for sale or distribution any article or other thing in violation of the rights of copyright protected by or under Maltese law; (c) possession, custody or control of any such article or other thing with a view to carrying out any of the abovementioned acts.



A person who is convicted of one of the aforementioned activities is liable to imprisonment for a term not exceeding three years or to a fine of not less than EUR 3 000 and not more than EUR 24 000 or to both such fine and imprisonment. In accordance with Article 121D, where the offence is committed on behalf and for the benefit of a body corporate (in part or in whole), the body corporate shall be liable to the payment of a fine of not less than EUR 20 000 and not more than EUR 2 000 000.

**Table 128. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No, national copyright law
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial bodies)	No
Entitlement to take legal action	Yes (broadcasters, any other rightsholders)
Codes of conduct	No
Specific proceedings	No
Specific remedies	No

Source: Maltese response to European Audiovisual Observatory standardised survey

**Table 129. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	No
Removal and blocking injunctions	Yes
Dynamic and/or live blocking injunctions	Not mentioned in national law; never applied
De-indexing injunctions	Not mentioned in national law; never applied
Damages and orders to cease and desist	N/A
Administrative offence and remedies	Not relevant for online copyright infringement
Notice and take-down procedures	Yes

Source: Maltese response to European Audiovisual Observatory standardised survey

## 6.20.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions, in relation to online infringement of audiovisual sports content.

There were no relevant national cases identified concerning copyright in relation to online infringement of audiovisual sports content, as also indicated in the table below.

**Table 130. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
<b>Communication to the public</b>	The sale of smart cards on the market did not lead to an infringement of copyright, in a case where previous authorisation had been given.	<i>Mizzi Henri Av. Dr. noe. et. v. Telestarr Limited</i>  <i>Mizzi Henry Av. Dr. noe. et. v. Mohammed Fluti</i>
<b>Hosting providers' knowledge and awareness of illegal activity</b>	N/A	N/A
<b>Notice and take-down</b>	N/A	N/A
<b>Measures against end-users</b>	N/A	N/A
<b>Criminal sanctions</b>	Criminal sanctions have been applied in a case where the infringer sold works without a licensee.	<i>The Police vs. Alhaji Tunkara</i>

Source: Maltese response to European Audiovisual Observatory standardised survey

### 6.20.4.1. Communication to the public

There are no cases related to infringement of the right of communication to the public in the field of sports events.

### 6.20.4.2. Online infringement of audiovisual sports content

In a case before the Court of Appeal,<sup>1087</sup> the plaintiff companies appealed a judgment handed down previously by the Civil Court, First Hall on 20 April 2012, that rejected the

<sup>1087</sup> Mizzi Henri Av. Dr. noe. et. vs. Telestarr Limited:



claims brought by the plaintiff regarding an alleged copyright infringement of the rights to the footage of the English Premier League games, of the Football Association Premier League Limited (hereinafter referred to as the FAPL). The Court of Appeal confirmed the decision of the First Court, in accordance with CJEU case law (*Football Association Premier League Limited v. QC Leisure* (C-403/08) and *Karen Murphy v. Media Protection Services Limited* (C429/08)), in which the CJEU states that a live football match cannot be protected as a copyrighted work, because the requisite of originality is absent, but that, in some cases, sporting events can be considered as intellectual creations and, in the case of unique and original character, can be protected. Nevertheless, in some cases, sports events can also be protected by domestic legal orders.

Another case concerned an alleged copyright infringement of the rights of the footage of the FAPL (PL and Melita Cable plc).<sup>1088</sup> The rightsholder was aware that the defendant (Fluti Mohammed operating under the trade name “Flutisat”) was selling cards such as “SKY (UK)”, “SKY (Italia)”, “IPS”, “ART” and “Digi Alb” to various consumers. The rightsholders claimed that this conduct constituted a violation of the copyrights of the FAPL to the footage of the English Premier League games and of Melita Cable plc, which was the only company authorised in Malta to transmit the English Premier League games. The court noted that although the footage as transmitted is subject to copyright, in this case, the sale of the smart cards on the market did not lead to an infringement of copyright, since in actual fact it turned out that the same smart cards were issued by the FAPL itself, authorised by the FAPL, and placed on the market by the PL or its authorised persons.

#### 6.20.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

Maltese courts do not provide a specific list of conditions to prove “actual knowledge of illegal activity”.

The concepts of knowledge and awareness are not defined by Maltese law, so it is left to the courts to determine what level of knowledge or awareness is required.

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<https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&CaseJudgementId=102417>.

<sup>1088</sup> Mizzi Henry Av. Dr. noe. et. vs. Mohammed Fluti

<https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&CaseJudgementId=76418>.





#### 6.20.4.4. Notice and take-down requirements

No specific requirements have been specified for the notification and take-down procedure related to the copyright infringement of audiovisual sports content, according to the case law in Malta.

#### 6.20.4.5. Removal and blocking orders

No case law was detected concerning the issuing of a warrant of prohibitory injunction against the actual perpetrators of the transmission of illegal content to date. However, an injunction has been filed by IMG Media Limited against the internet Service Providers (ISPs) in Malta to stop the illegal transmission of Serie A games, two of which were uncontested (and thus upheld provisionally by the court) and one of which was contested by the ISP in question (and consequently not upheld by the court). The request made to the court (and upheld provisionally in the case of the uncontested warrants) was to block specific Internet Protocol (IP) addresses as well as any other IP addresses from which Serie A games were being illegally transmitted. These were to be identified by a third party, engaged by IMG Media on an ongoing basis.

It may be noted that at the end of May 2021, another such warrant of prohibitory injunction was filed in court and upheld against all three ISPs, to block access to the final Serie A game of the season, and then subsequently withdrawn by IMG Media.

#### 6.20.4.6. Measures against end-users ordered by the courts

Measures against end-users have not been taken by the Maltese courts or the police, such as suspending or blocking internet access. Furthermore, there are no decisions by the Maltese courts related to the collection of personal data by private entities in order to identify the end-users who have committed violations.

#### 6.20.4.7. Compensation criteria adopted by the courts

With regard to the compensation criteria, under the Maltese law, an action for damages may be instituted either by a natural or legal person, provided such person has an interest. The Maltese courts held that the interest of the plaintiff must be juridical, personal, direct, and actual. In order to guarantee the success of the action for damages, the act must: (i) be unlawful; (ii) cause damage; (iii) be imputable to the person committing it; and (iv) have been committed through *dolus* or *culpa*. The specific intention of causing damage to the victim is not required. Furthermore, Article 1045(1) of the [Civil Code](#) outlines how damages are to be assessed and liquidated.

The compensation that could be awarded to a plaintiff for the damages that occurred to sports event broadcasters, can take the form of monetary compensation



equivalent to the actual loss which the act would have directly caused to the injured party, the expenses which the latter may have been compelled to incur in consequence of the damage, or the loss of actual wages or other earnings.

Article 12 of the IP Enforcement Act states that the court shall – on application filed by the injured party – order any infringer who has (either knowingly or being reasonably expected to know) engaged in an infringing activity, to pay the rightsholder damages commensurate with the actual prejudice suffered by the rightsholder because of the infringement. When setting the amount of the damages due, the court shall consider all relevant aspects as mentioned in Article 12(2) of the IP Enforcement Act, in line with Article 13(1)(a) of the IPRED. The court may also choose to apply an alternative method of calculation involving the setting of a lump sum of damages payable, in line with Article 13(1)(b) of the IPRED. Article 12(3) of the IP Enforcement Act states that where the court is of the opinion that the infringer did not knowingly engage in an infringing activity, it may order the recovery of the profits or the payment of damages, as per Article 13(2) of the Directive.

#### 6.20.4.8. Criminal sanctions ordered by the courts

The Maltese criminal courts have not applied criminal sanctions specifically to online piracy of audiovisual sports content.

### 6.20.5. Reports and studies

From a non-legal perspective, there are no public studies related to online piracy of protected content in Malta.

There are no specific national studies or reports examining the technologies and business models used for the illegal streaming of sports content in Malta. However, the topic has been widely discussed in the media, for instance, newspapers, articles and television programmes. There are no studies describing the legal offer of online sports content in Malta.

With regard to awareness-raising campaigns related to online piracy in Malta, these have not been detected.

### 6.20.6. Data compilation

This country report is based on data compiled by Michael Grech, Attorney at Law and partner at GVZH Advocates, Jackie Mallia, consultant, Nicole Sciberras Debono, associate, and Nina Fauser (trainee), at GVZH Advocates, in Malta.



## 6.20.7. Annex

**Table 131. Overview of relevant transposition measures**

EU directives	National law
Conditional Access Directive 98/84/EC	Electronic Communications (Regulation) Act (Chapter 399)
Article 5 Conditional Access Directive 98/84/EC – Infringing activities	Article 25
InfoSoc Directive 2001/29/EC	Copyright Act (Chapter 415)
Article 6 InfoSoc – Obligations as to technological measures	Article 42(1)(a) to (f)
Article 8 InfoSoc paragraphs 1 and 2 – Sanctions and remedies	Article 42(2)
Article 8 paragraph 3 InfoSoc – Sanctions and remedies	Article 43
IPRED 2004/48/EC	Enforcement of Intellectual Property Rights (Regulation) Act (Chapter 488)
Article 6 IPRED – Evidence and Article 7 IPRED – Measures for preserving evidence	Article 6
Article 8 IPRED – Right of information	Article 7
Article 9 IPRED – Provisional and precautionary measures	N/A
Article 10 IPRED – Corrective measures	Articles 9, 10 and 11
Article 11 IPRED – Injunction	Articles 9, 10 and 11
Article 12 IPRED – Alternative measures	N/A
Article 13 IPRED – Damages	Article 12 (2)
E-Commerce Directive 2000/31/EC	Electronic Commerce Act (Chapter 426 of the Laws of Malta), (the E-Commerce Act)
Article 12-15 E-Commerce Directive – Liability of intermediary service providers	Articles 19 to 22
Article 17 E-Commerce Directive – Out-of-court dispute settlement	Article 24 A
Art 20 E-Commerce Directive – Sanctions	Article 24
DSM Directive EU 2019/790	Transposed by Subsidiary Legislation 415.08 – Copyright and Related Rights in the Digital Single Market Regulations

## 6.21. NL – Netherlands – National legal summary<sup>1089</sup>

### 6.21.1. General legal framework

#### 6.21.1.1. National legislation on copyright<sup>1090</sup>

In the Netherlands, the main acts that regulate the scope and the enforcement of copyright and related rights are:

- the Dutch Copyright Act (*Wet van 23 september 1912, houdende nieuwe regeling van het auteursrecht, Auteurswet* – the DCA) as amended, in particular Chapter 2 (Exercise and enforcement of copyright, criminal provisions)<sup>1091</sup>
- the Dutch Neighbouring Rights Act (*Wet op de naburige rechten – Wet van 18 maart 1993, houdende regelen inzake de bescherming van uitvoerende kunstenaars, producenten van fonogrammen of van eerste vastleggingen van films en omroeporganisaties en wijziging van de Auteurswet 1912, Staatsblad 1993, 244* – the DNRA), in particular Chapter 3 (Exercise and enforcement of neighbouring rights) and Chapter 4 (provisions of criminal law)<sup>1092</sup> and
- the Dutch Act on Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*) Book 3, Title 15 (proceedings in cases of intellectual property).<sup>1093</sup>

In the Netherlands, copyright infringement is considered both as a criminal offence and a civil law violation. Under civil law, copyright infringement qualifies as an unlawful act. In addition, Articles 31 through 34 of the DCA are provisions of criminal law that make intentionally committing copyright infringement punishable. The DNRA contains similar provisions of criminal law.

Dutch national law establishes a differentiation for crimes based on acting for profit. Indeed, according to Article 31b of the DCA, intentionally committing copyright infringement for professional or commercial reasons is punishable to a higher degree than other cases of intentional copyright infringement that are covered by Article 31 of the DCA.

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<sup>1089</sup> The country report on The Netherlands incorporates the feedback received from Cyril B. van der Net (Ministry of Justice and Security) during the checking round with the national competent institutions.

<sup>1090</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>1091</sup> <https://wetten.overheid.nl/BWBR0001886/2021-01-01>.

<sup>1092</sup> <https://wetten.overheid.nl/BWBR0005921/2018-10-11>.

<sup>1093</sup> <https://wetten.overheid.nl/BWBR0001827/2021-04-01>.

### 6.21.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>1094</sup> has been transposed into Dutch national law; most of its articles entered into force on 7 June 2021.<sup>1095</sup>

Article 17 of the DSM Directive is implemented in the new Articles 27c, 27d and 27e of the DCA and in corresponding provisions of the DNRA. These provisions largely follow the structure of Article 17 of the DSM Directive.

**Table 132. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	<i>Staatsblad</i> 2020, 558, effective as of 7 June 2021 <sup>1096</sup>
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	Dutch Act of 8 March 2007 ( <i>Staatsblad</i> 2007, 108) amending, <i>inter alia</i> , the DCA
<b>Information Society (InfoSoc) Directive</b>	Dutch Copyright Act (the DCA); Dutch Neighbouring Rights Act, (the DNRA). <sup>1097</sup>
<b>E-Commerce Directive</b>	Dutch Civil Code; Dutch Criminal Code
<b>Conditional Access Directive</b>	Dutch Penal Code

Source: Dutch response to European Audiovisual Observatory standardised survey

<sup>1094</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

<sup>1095</sup> *Wet van 16 december 2020 tot wijziging van de Auteurswet, de Wet op de naburige rechten, de Databankenwet en de Wet toezicht en geschillenbeslechting collectieve beheersorganisaties auteurs- en naburige rechten in verband met de implementatie van Richtlijn (EU) 2019/790 van het Europees parlement en de Raad van 17 april 2019 inzake auteursrechten en naburige rechten in de digitale eengemaakte markt en tot wijziging van de Richtlijnen 96/9/EG en 2001/29/EG (Implementatiewet richtlijn auteursrecht in de digitale eengemaakte markt)*, <https://zoek.officielebekendmakingen.nl/stb-2020-558.html>.

<sup>1096</sup> Op. cit.

<sup>1097</sup> <https://wetten.overheid.nl/BWBR0001886/2021-01-01>



## 6.21.2. National rules applicable to audiovisual sports content

### 6.21.2.1. Legal definitions of broadcaster and sports event organiser

Although there is no explicit definition of “broadcaster” in Dutch law, a “broadcasting service” is referred to in Article 1.1. of the Media Act (*Mediawet*) of 2008, as a

*media service relating to the provision of media offerings which, on the basis of a chronological schedule determined by the institution responsible for the media offerings, are distributed in encrypted or non-encrypted form through a broadcasting station or a broadcasting network for simultaneous reception by the general public or part thereof.*<sup>1098</sup>

There is no legal definition of “sports event organiser” in Dutch law.

### 6.21.2.2. Legal protection related to sports events

There is no specific legal protection for sports event organisers. However, sports event organisers may derive some limited protection from the “house right” based on the right of property in the stadium, which was recognised in the Dutch Supreme Court’s landmark ruling in the case of *NOS v. KNVB*.<sup>1099</sup> The house right effectively allows sports event organisers to prevent or condition on-site radio or television coverage of the event. It does not however have any legal effect against third parties and may therefore not be invoked against online pirate platforms.

A sports event broadcast is likely to qualify as an original “film work” protected by copyright, since broadcasting sports events usually entails creative choices by (multiple) camera operators, director(s), video editors, etc. Even live broadcasts may qualify as protected “film works”, since Dutch copyright law does not require fixation as a precondition to copyright protection. However, if an event is recorded and/or transmitted with no or insufficient creative input by human beings, there will be no copyright protection for the recording or the transmission. This might be the case, for instance, when a sports event is automatically televised with the aid of still cameras, drones or robots.

However, broadcasters will in any case be protected by neighbouring (or “related”) rights in their broadcast signals, pursuant to the Dutch Neighbouring Rights Act (the DNRA) (*Wet Naburige Rechten*), which implements the related rights required by Directive

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<sup>1098</sup> However, since the *Mediawet* does not concern intellectual property law, this definition may not be decisive in the context of online enforcement actions.

<sup>1099</sup> *Hoge Raad* (Dutch Supreme Court), 23 October 1987, NJ 1988, 310 (*KNVB v NOS*), available at <https://www.ie-forum.nl/artikelen/mijlpaalarrest-nos-tegen-knvv>. See also *Hoge Raad*, 23 May 2003, NJ 2003, 494 (*KNVB v Feyenoord*).

2006/115/EC. Moreover, television producers may benefit from the related rights granted to producers of the first fixations of films, pursuant to the DNRA.

In practice, the rights in the audiovisual recordings and broadcasts of sports events are often transferred to the sports event organisers. Moreover, sports event organisers increasingly act as television producers themselves and thus may directly invoke copyright and related rights protection.

Regarding the entitlement to take legal action in the case of infringement of broadcasting or online transmission of sports events, in principle, only the rightsholder will have standing to sue for infringement under copyright and/or related rights. However, non-rightsholders may also take legal action based on a power of attorney (*volmacht*). In practice, licencees will often be granted a power of attorney to start a legal action on behalf of the rightsholder. Additionally, Articles 27(2) (a) and 28(6) of the DCA and Article 16(3) of the DNRA allow licencees to intervene in ongoing infringement procedures between rightsholders and alleged infringers. None of these rules specifically concern sports content.

As regards sports league organisers, they will not have standing to sue unless (i) copyright and/or related rights in sports event broadcasts are transferred to them; (ii) they have acted as broadcasters or television producers and are therefore protected by related rights; or (iii) the rightsholder in the sports content has granted them a power of attorney.

### 6.21.2.3. Other specific rules applicable to sports events

There is no other specific legal protection for sports events organisers in the Netherlands. Furthermore, no specific rules are provided under Dutch law concerning the use of sports content in social media.

**Table 133. Definitions of the main concepts concerning audiovisual sports events**

Concept	Existence of a definition	Relevant rights
Broadcaster	Yes	Related rights
Sports event organiser	No	House rights

Source: Dutch response to European Audiovisual Observatory standardised survey



## 6.21.3. Remedies and sanctions applicable in the event of infringement

### 6.21.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

The substantive rights harmonised by the InfoSoc Directive (rights of reproduction, communication to the public and distribution) are generally protected in the DCA under Articles 1, 12, 12b and 13. These rights are subject to the general rules on copyright enforcement provided in Chapter 2 of the DCA.

Remedies and sanctions that may be directly invoked depend on the claims and the facts of the case. Relevant factors are: (1) Who is the plaintiff? (2) Is the sports content protected by copyright or related rights? (3) Is the plaintiff a rightsholder? (4) Is the case brought against an alleged infringer and/or an intermediary?

Additionally, according to Article 26d of the DCA, copyright owners may seek injunctions against internet providers and other online intermediaries whose services are being used by third parties for infringing purposes.

Generally speaking, rightsholders of audiovisual sports content benefit from all remedies and sanctions under the DCA and the DNRA, insofar as the sports content may be deemed protected subject matter. Injunctions based on Article 26d of the DCA (against intermediaries) are particularly important for owners of audiovisual sports content seeking to enforce their rights against platforms offering pirate streaming channels.

Regarding civil remedies as provided in Articles 6 to 13 of the IPRED (e.g. injunctive relief, damages, etc.) these are regulated in the general provisions of the Dutch Act on Civil Procedure (DACP) and in the corresponding case law. In addition, one chapter specifically addresses the proceedings in cases of intellectual property (IP), such as Article 1019a to 1019d concerning measures to preserve evidence.

Importantly, Article 1019e of the DACP allows an *ex parte* procedure (i.e. provisional proceedings without hearing the defendant party) in urgent cases, especially if delay would cause an irreparable harm to the rightsholder (this procedure is further detailed in section 6.21.3.5 below). Dutch courts generally grant *ex parte* IP injunctions only in cases of clear and recent or current (ongoing) IP infringements. Injunctions will usually be sanctioned by way of civil penalties. However, no ancillary remedies (claims for damages or disclosure orders) may be requested in *ex parte* proceedings. This procedure can also be applied in cases of online piracy of audiovisual sports content.

Another important provision is Article 1019g, which allows Dutch civil courts to “order the unsuccessful party to pay reasonable and proportionate legal costs and other expenses incurred by the successful party, unless equity prevents this”.





Regarding the right to information, it might be invoked, for example, by rightsholders in audiovisual sports content to require a provider of an illegal online sports channel to reveal its sources of the sports content being streamed (Article 1019f). Article 28(9) of the DCA provides for a similar right of information vis-à-vis commercial distributors or intermediaries whose services are used by third parties to infringe copyrights.

Concerning the protection of technological measures and rights management information, Articles 29a, 32a of the DCA and Articles 19 and 19a of the DNRA implement sanctions and remedies, as prescribed in Articles 6 and 8 of the InfoSoc Directive. In particular, Article 32a of the DCA makes intentionally facilitating acts of circumvention of technical measures a criminal offence, as follows:

*Any person who intentionally: a. publicly offers for distribution; b. has to hand, for the purpose of distribution; c. imports, forwards or exports; or d. keeps, in pursuit of profit any means the sole intended purpose of which is to facilitate the removal or circumvention of any technological measure applied to protect a work as referred to in Section 10 (1) sub 12°, without the consent of the author or his successor in title, is punishable with imprisonment for a term of not more than six months or with a fine of the fourth category.*

These sanctions and remedies can also be applied to cases concerning online piracy of audiovisual sports content.

Furthermore, the unlawful acts defined in the Conditional Access Directive have been made punishable as criminal offences under Article 326c of the Dutch Penal Code, as follows:

*Any person who, with the intention of not paying for it in full, by technological means or by means of false signals, uses a service offered to the general public by means of telecommunication, shall be liable to a term of imprisonment not exceeding four years or a fine of the fifth category. 2. Any person who intentionally: a. openly offers for distribution, b. has in his possession for distribution or with a view to importing such into the Netherlands, or c. in pursuit of profit, manufactures or keeps, an object or data clearly intended to be used in the commission of the serious offence defined in subsection (1), shall be liable to a term of imprisonment not exceeding two years or a fine of the fourth category. 3. Any person who commits the serious offences referred to in subsection (2) as a profession or business, shall be liable to either a term of imprisonment not exceeding four years and a fine of the fifth category or one of these punishments.*

#### 6.21.3.2. National bodies with competences on copyright enforcement

There is no national authority (e.g. administrative body) other than judicial bodies with specific competences to address copyright infringement in the Netherlands.



### 6.21.3.3. Codes of conduct and Memorandums of Understanding

In the Netherlands, there is a Notice and Take Down Code of Conduct (*Gedragcode notice and takedown*), which was adopted in 2008, following negotiations between internet providers and a variety of other stakeholders.<sup>1100</sup> The code is general in scope, and does not deal specifically with copyright infringement nor the infringement of rights in sports content.

The code creates a procedure for internet intermediaries on how to deal with notifications of instances of unlawful and criminal content on the internet. It provides a general procedure for notice and take-down (NTD) and attempts to remove uncertainties regarding the procedure to be followed, the conditions under which removal should take place, and the timing of removal.<sup>1101</sup> For example, the code prescribes what information must be provided to the service provider. The code combines elements of notice and takedown with notice and notice. Only if the material is unmistakably unlawful should the service provider proceed with removal. If it is not, then the service provider should notify the provider of the material and ask it to contact the complainant.

The code is broadly supported by the Dutch internet industry. However, adherence and compliance to the code are voluntary.

### 6.21.3.4. Notice and take-down procedures

Notice and take-down (NTD) procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

NTD procedures are based on the provision on the liability exemption regime of Article 196c of the DCC. Such procedures will therefore only arise in cases against services that qualify as “hosting service providers”.<sup>1102</sup>

The Netherlands has no statutory rules on NTD. Providers must first receive a notice. If the provider fails to take down the allegedly infringing content under copyright law, it will incur civil liability (i.e. the provider will be deemed to have acted in an

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<sup>1100</sup> Notice and Takedown Code of Conduct (*Gedragcode notice and takedown*), English language version available at [https://noticeandtakedowncode.nl/wp-content/uploads/2018/12/NTD\\_Gedragcode\\_English.pdf](https://noticeandtakedowncode.nl/wp-content/uploads/2018/12/NTD_Gedragcode_English.pdf)

<sup>1101</sup> Article 3a of the code provides that “An intermediary publishes a procedure describing the manner and time limits within which reports are dealt with by the intermediary. Distinctions can be made between various different forms of service provision within this procedure”. A note to Article 3a clarifies that “A reasonable time limit by which an evaluation can be completed is, for example, five working days, in cases where it can be disputed whether the content is wrongful or unlawful. The reasonableness of the time limit is related to the severity of the alleged infringement and the social upheaval that may become paired with this. In cases where it is clearly indisputable, a judgement can be arrived at very quickly.

<sup>1102</sup> In line with the interpretation given to this notion by the Court of Justice of the European Union (CJEU) (notably CJEU joint cases C-236/08 t/m C-238/08 (*Google*) and C-324/09 (*L'Oréal and Others*), this is a fairly broad notion that encompasses a wide spectrum of online services.

unlawful manner), which amounts to an unlawful act (Article 6:162 of the Dutch Civil Code) but does not qualify as an act of direct copyright infringement.

As previously mentioned,<sup>1103</sup> Dutch internet providers have agreed on a voluntary industry code on NTD that is widely observed in practice.

#### 6.21.3.5. Removal and blocking orders

Injunctions are usually sought by rightsholders either in *ex parte* procedures or in summary proceedings (*kort geding*). In the latter case, defendants are involved in the proceedings. In *kort geding* proceedings, rightsholders can request injunctions sanctioned by way of civil penalties, as well as a variety of ancillary court orders, such as court orders to disclose information on the names and whereabouts of alleged infringers, blocking orders, etc.

Procedural rules for *kort geding* proceedings are laid down in Article 254 of the Dutch Code on Civil Procedure. *Kort geding* proceedings are allowed only in urgent cases, although in practice this is not a very strict requirement. *Kort geding* proceedings are initiated by a summons. Usually, at least a week will pass between the issuing of the summons and the court hearing, although in extremely urgent cases courts may agree to hearings on very short notice (occasionally, within days). Judicial decisions will usually require several more weeks, although occasionally decisions are pronounced within days, or even directly following the hearing.

Injunctions may be sought not only against alleged infringing parties, but also against innocent intermediaries (Article 26d DCA and Article 15e DNRA).

Among the main measures taken against online intermediaries, Dutch courts may grant the following injunctions: (i) blocking orders;<sup>1104</sup> (ii) injunctions against mirror and proxy sites;<sup>1105</sup> (iii) dynamic injunctions;<sup>1106</sup> (iv) and de-indexing injunctions.<sup>1107</sup>

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<sup>1103</sup> See section 6.21.3.3. of this country report.

<sup>1104</sup> *Hoge Raad* (Supreme Court), 29 juni 2018, ECLI:NL:HR:2018:1046 (*Brein v. Ziggo*). In this case, the Supreme Court confirmed that internet access providers Ziggo and XS4ALL may be ordered to block access to The Pirate Bay, after the CJEU had previously decided that operating a file sharing platform qualifies as communication to the public.

<sup>1105</sup> *Vzr. Rechtbank Midden-Nederland* (President of the District Court Central Netherlands), 8 October 2020, IEF 19476, IT 3269; ECLI:NL:RBMNE:2020:4399 (*Brein v. Ziggo c.s.*), available at <https://www.ie-forum.nl/artikelen/ziggo-xs4all-en-kpn-moeten-mirror-en-proxysites-the-pirate-bay-blokkeren>. The Court ordered Internet access providers Ziggo, XS4ALL and KPN to block various mirror and proxy sites of The Pirate Bay.

<sup>1106</sup> *Gerechtshof Amsterdam* (Court of Appeal, Amsterdam) 2 June 2020, Case No. 200.243.005/01, ECLI:NL:GHAMS:2020:1421 (*Stichting Brein v. Ziggo and XS4ALL*). The Court issued a dynamic blocking injunction against two ISPs, Ziggo and XS4ALL, aimed at preventing access to The Pirate Bay. The Court allows the scope of the blocking order to be extended on a periodic basis upon notification by Brein of lists of



Theoretically, all the enforcement measures and procedures mentioned may be applied in cases of online piracy of live sport events. There is a broad application of *ex parte* injunctions against illegal streaming sites, for instance.<sup>1108</sup> However, even the most expedient injunction by way of an *ex parte* procedure will take a minimum of three days to have effect, which is obviously far too long to terminate the online streaming of an ongoing sports event, such as a football match.

#### 6.21.3.6. Measures against end-users

Dutch courts do not apply measures against end-users such as suspending or blocking internet access in cases of copyright infringement.

As to orders based on the “right to information” enshrined in Article 28 of the DCA and Article 1019f of the Dutch Code of Civil Procedure, implementing Article 8 of the IPRED, the Dutch Personal Data Authority (*Autoriteit Persoonsgegevens*) has set certain limits to collecting personal data by rightsholders for copyright enforcement purposes. The authority requires, *inter alia*, a written privacy protocol and sufficient security measures.<sup>1109</sup>

#### 6.21.3.7. Criminal sanctions

There are no specific criminal proceedings concerning sports content. If the sports content is protected by copyright and related rights, criminal prosecution is possible if the infringer acted with intent. Facilitating illegal decoding may also give rise to criminal prosecution.

The normal rules for criminal enforcement apply. In particular, Articles 31 to 34 of the DCA regulate criminal copyright infringement. The DNRA contains similar provisions of criminal law.

In practice, criminal enforcement in cases of online piracy of audiovisual sports will depend on the policy agenda of the public prosecutor and the resources of the

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supplementary URLs used by The Pirate Bay. See case report in English at <http://ipkitten.blogspot.com/2020/07/amsterdam-court-of-appeal-issues.html>.

<sup>1107</sup> Delisting requests against Google Search listings of sources of illegal content are routinely granted by Google, subject to Google’s universal NTD procedure. See <https://developers.google.com/search/docs/advanced/crawling/remove-information>.

<sup>1108</sup> *Vzr. Rechtbank Noord-Nederland* (President of the District Court North-Netherlands) 14 February 2017, IEF 16641; IT 2242 (Place2use.net): <https://www.ie-forum.nl/artikelen/ex-parte-aanbod-van-hyperlinks-naar-streams-op-place2use-achter-een-pay-wall-is-ie-inbreuk>; *Vzr. Rechtbank Rotterdam*, 26 January 2017, IEF 16550 (*Stichting Brein v. Live Bioscoop*): <https://www.ie-forum.nl/artikelen/ex-parte-verbod-tegen-streaming-via-facebook-live-bioscoop>.

<sup>1109</sup> See *Definitief besluit inzake de verklaring omtrent de rechtmatigheid van online handhaving van intellectuele eigendomsrechten door Dutch FilmWorks B.V.*; z2017-02053, 5 December 2017, available at <https://autoriteitpersoonsgegevens.nl/nl/nieuws/ap-geeft-groen-licht-voor-verwerking-persoonsgegevens-door-dutch-filmworks>.

national police. As a consequence, criminal prosecution of copyright infringement is rare in the Netherlands.

**Table 134. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial bodies)	No
Entitlement to take legal action	Yes, rightsholders and non-rightsholders (based on a power of attorney – <i>volmacht</i> )
Codes of conduct	Yes, notice and takedown code of conduct
Specific proceedings	No
Specific remedies	No

Source: Dutch response to European Audiovisual Observatory standardised survey

**Table 135. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	Yes
Removal and blocking injunctions	Yes
Dynamic and/or live-blocking injunctions	Yes
De-indexing injunctions	Yes
Damages and orders to cease and desist	Yes
Administrative offence and remedies	Not relevant for online copyright infringement
Notice and take-down procedures	Yes

Source: Dutch response to European Audiovisual Observatory standardised survey



## 6.21.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity ; notice and take-downs; measures against end-users and criminal sanctions, in relation to online infringement of audiovisual sports content.

**Table 136. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
<b>Communication to the public</b>	<ul style="list-style-type: none"> <li>- Showing matches in pubs on wide screens without a licence by the pub owners constitutes a communication to the public;</li> <li>- A website that aggregates unauthorised live streams of football matches without authorisation commits infringing acts of communication to the public;</li> <li>- Whether the selling of an IPTVmediaplayer offering hyperlinks to unlawful streaming sites could be qualified as communication to the public.</li> </ul>	<p><i>Vzr. Rechtbank Amsterdam</i> (President of the District Court Amsterdam) 18 April 2019, (<i>Eredivisie Media en Marketing v. X</i>)</p> <p><i>Rechtbank Limburg</i> (Court of Limburg) 26 March 2014 (<i>Football Associations v. MyP2P</i>)</p> <p><i>Rechtbank Midden-Nederland</i> 10 June 2015. This led to the judgment of the CJEU of 26 April 2017, Case C-527/15 (<i>Stichting Brein v. Wullems</i> )</p> <p><i>Vzr. Rechtbank Noord-Holland</i> (President of the District Court North-Holland) 12 June 2020</p>
<b>Hosting providers' knowledge and awareness of illegal activity</b>	<p>A simple notification of the hosting service provider is insufficient to trigger liability.</p> <p>The qualification of a service as an intermediary and the notion of "expeditious" action for a hosting service provider to remove infringing content following the formal notification of copyright infringement on its service by the rightsholder (30 minutes).</p>	<p><i>Rechtbank Den Haag</i> (District Court The Hague) 9 June 1999, (<i>Scientology v. XS4ALL</i>)</p> <p><i>Rechtbank Den Haag</i> (District Court The Hague) 24 January 2018 (<i>Premier League/Ecatel</i>)</p>
<b>Notice and take-down</b>	N/A	N/A
<b>Measures against end-users</b>	A multifactor test named the Lycos/Pessers test for disclosing the data of alleged infringers was validated by the Supreme	<i>Hoge Raad</i> (Supreme Court) HR November 25 2005, NJ 2009, 550, LJN AU4019 ( <i>Lycos v. Pessers</i> )



Content	Substance of the decision	Decisions
	Court.	<i>Rechtbank Den Haag</i> (District Court The Hague) August 17 2016, Case C/09/515172 / KG ZA 16-905, ECLI:NL:RBDHA:2016:9685 ( <i>ADO Den Haag a.o. v. Global Layer</i> ).
<b>Criminal sanctions</b>	N/A	N/A

Source: Dutch response to European Audiovisual Observatory standardised survey

#### 6.21.4.1. Communication to the public

Regarding the notion of communication to the public, some relevant cases may be highlighted in the Netherlands. In particular, the Dutch premier football league (*Eredivisie*) regularly litigates against pub owners showing matches in pubs on wide screens without a licence. For example, in *Eredivisie Media en Marketing v. X*,<sup>1110</sup> the District Court of Amsterdam found that there was copyright infringement since showing copyright protected content on screens to the public amounts to communication to the public (*openbaarmaking*).

A highly interesting decision concerning the copyright status of televised match reports and the notion of communication to the public was issued in *Football Associations v. MyP2P* by the Court of Limburg (*Rechtbank Limburg*) on 26 March 2014.<sup>1111</sup> In this case the FA and other national football leagues sued MyP2P, a website that aggregates unauthorised live streams of football matches without authorisation, for copyright infringement. The court held that televised match reports qualify as copyright protected works. Although a sports match itself cannot be considered a protected “work”, the visual reports qualify as a work. The court considered (paragraph 4.5):

*In this case, it is undisputed that the visual reports were created using a large number of cameras in fixed and/or mobile positions in the room where the sports games are held. In the control room, the images from all cameras are visible to the director. In the creation of the footage reports, the director has many free choices. These choices include the number of cameras, the (combination of) camera angles and positions, the (combination of) camera movements and the absolute and relative speed of those movements, the game situations to be followed, the zooming in and out of certain game situations, the switching moments from camera to camera, the speed of perspective changes, whether or not the camera*

<sup>1110</sup> *Eredivisie Media en Marketing v. X*, Vzr. *Rechtbank Amsterdam* (President of the District Court Amsterdam) 18 April 2019, IEF18416; ECLI:NL:RBAMS:2019:2694, <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2020:4966>.

<sup>1111</sup> *Football Associations v. MyP2P*, Court of Limburg (*Rechtbank Limburg*) on 26 March 2014, ECLI:NL:RBLIM:2014:2781



*moves along with certain game actions, the interpretation of dead game moments, the timing and repetition of image cuts. The director continuously determines which elements of a sporting event, which he considers important, are to be portrayed, as well as the manner and the moment in which these elements are portrayed.*

The court held that MyP2P committed infringing acts of communication to the public, by offering aggregated live streams operated by third parties (which open up to the viewers in a separate screen upon clicking on a link). The defendant's argument based on the Svensson case (C-466/12)<sup>1112</sup> was not accepted, since the links offered by MyP2P did not point to content that was lawfully made available online. Although MyP2P made available the live streams for free, the court found a profit motive in that MyP2P receives income from advertisements and donations. The Court of Limburg's Decision was confirmed by the Den Bosch Court of Appeal (*Gerechtshof 's-Hertogenbosch*) on 30 June 2015.<sup>1113</sup>

In another case referred to as the *Filmspeler* case (*Stichting Brein v. Wullems*), the District Court of Central Netherlands (*Rechtbank Midden-Nederland*) asked for a preliminary ruling from the Court of Justice of the European Union (CJEU) as to whether the selling of an Internet Protocol television (IPTV) media player offering hyperlinks to unlawful streaming sites (including sports streaming sites) could be qualified as communication to the public.<sup>1114</sup> This led to the judgment of the CJEU of 26 April 2017, Case C-527/15 (*Stichting Brein v. Wullems*).<sup>1115</sup>

An application of the *Filmspeler* rule can be found in the *ex parte* decision of the President of the District Court of North-Holland (*Vzr. Rechtbank Noord-Holland*) of 12 June 2020, which concerned an IPTV service offering multiple hyperlinks to unlawful (sports and audiovisual) streaming sites.<sup>1116</sup>

#### 6.21.4.2. Online infringement of audiovisual sports content

With regard to the protection of sports event organisers, the above-mentioned cases (see section 6.21.4.1. of this country report) are the only ones related to audiovisual sports content.

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<sup>1112</sup> CJEU C-466/12 - Svensson and Others, 13 February 2014, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62012CJ0466>

<sup>1113</sup> Court of Appeal Den Bosch (*Gerechtshof 's-Hertogenbosch*) on 30 June 2015, ECLI:NL:GHSHE:2015:2434

<sup>1114</sup> *Rechtbank Midden-Nederland* 10 June 2015, ECLI:NL:RBMNE:2015:4343. This led to the judgment of the CJEU of April 26 2017, Case C-527/15 (*Stichting Brein*):

<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBMNE:2015:4343>. (*Stichting Brein* is the Dutch professional defence body representing rightsholders (mostly) in the music and entertainment industries).

<sup>1115</sup> The concept of "communication to the public" must be interpreted as covering the sale of a multimedia player, on which there are pre-installed add-ons, available on the internet, containing hyperlinks to websites – that are freely accessible to the public – on which copyright-protected works have been made available to the public without the consent of the rightsholders.

<sup>1116</sup> *Vzr. Rechtbank Noord-Holland* (President of the District Court North-Holland) of 12 June 2020, IEF 19276; C/15/303857.



An important decision concerning the illegal live streaming of sports is the decision of the District Court of The Hague (*Rechtbank Den Haag*) in the *Premier League v. Ecatel* case, of 24 January 2018.<sup>1117</sup> Ecatel is an internet provider that provides access to illegal livestreams of sports content offered by third parties. The District Court held that Ecatel qualifies as an intermediary in the sense of Article 26d of the DCA and must therefore block the streams during the matches. In addition, in an unprecedented decision, the District Court of The Hague has assessed the notion of “expeditious” action for a hosting service provider in light of technological developments, setting the time limit for prompt action at 30 minutes, following the formal notification of copyright infringement on its service by the rightsholder.<sup>1118</sup>

#### 6.21.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

The provider will have knowledge of the unlawful nature if it is unreasonable to doubt the accuracy of the notification, or if the information is unmistakably unlawful. Whether the provider should have such knowledge depends on the circumstances of the case.<sup>1119</sup>

The leading case in the Netherlands concerning actual knowledge predates the implementation of the E-Commerce Directive. According to the District Court of The Hague (*Rechtbank Den Haag*) in the *Scientology v. XS4ALL* case of 9 June 1999,<sup>1120</sup> a simple notification of the hosting service provider is insufficient to trigger liability. What is required is that the notice does not give reason to doubt the correctness of the notification.

#### 6.21.4.4. Notice and take-down requirements

As mentioned above, Dutch courts require that a notice does not give reason to doubt the correctness of the notification. Furthermore, notice and stay-down orders had not been

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<sup>1117</sup> *Rechtbank Den Haag* (District Court The Hague) of 24 January 2018, ECLI:NL:RBDHA:2018:615 (*Premier League/Ecatel*): <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2018:615>.

<sup>1118</sup> Op. cit., Ecatel, 2018. For further details on the Ecatel case, please refer to Chapter 5 on Case Studies.

<sup>1119</sup> See Letter from the Minister of Justice, Parliamentary Papers II 2003/04, 28 197, No. 15, p. 2. See also Explanatory Memorandum, Parliamentary Papers II 2001/02, 28 197, No. 3, pp. 49-50.

<sup>1120</sup> *Scientology v. XS4ALL*, District Court The Hague (*Rechtbank Den Haag*) 9 June 1999, ECLI:NL:RBSGR:1999:AA1039: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBSGR:1999:AA1039>.



granted by Dutch courts, which considered that “stay-down” would imply general monitoring, which would not be permitted under Article 15 E-Commerce Directive. This was first stated by the Court of Appeal of Amsterdam in the Usenet case (2014).<sup>1121</sup> Following this decision, the Dutch Supreme Court (*Hoge Raad*) has requested a preliminary ruling by the CJEU on whether Article 15 of the E-Commerce Directive prohibits notice and stay-down orders in copyright cases. The case is currently pending.<sup>1122</sup>

#### 6.21.4.5. Removal and blocking orders

Several interesting cases may be cited regarding the application of removal and blocking orders. Concerning the issuing of blocking injunctions against online intermediaries, the Dutch Supreme Court (*Hoge Raad*), confirmed in a judgement of 29 June 2018 in the *Brein v. Ziggo* case that internet access providers Ziggo and XS4ALL may be ordered to block access to The Pirate Bay, after the CJEU had previously decided that operating a file sharing platform qualifies as communication to the public.<sup>1123</sup>

Furthermore, in the *Brein v. Ziggo* case of 8 October 2020, the President of the District Court of Central Netherlands (*Vzr. Rechtbank Midden-Nederland*), ordered internet access providers Ziggo, XS4ALL and KPN to block various mirror and proxy sites of The Pirate Bay.<sup>1124</sup>

Regarding dynamic injunctions, the Court of Appeal Amsterdam (*Gerechtshof Amsterdam*) in the *Stichting Brein v. Ziggo and XS4ALL* case issued, on 2 June 2020, a dynamic blocking injunction against two internet Service Providers (ISPs), Ziggo and XS4ALL, aimed at preventing access to The Pirate Bay. The court allowed the scope of the blocking order to be extended on a periodic basis upon notification by Brein of lists of supplementary URLs used by The Pirate Bay.<sup>1125</sup>

#### 6.21.4.6. Measures against end-users ordered by the courts

Courts do not apply measures against end-users, such as suspending or blocking internet access. However, Dutch courts regularly issue orders to internet providers in order to

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<sup>1121</sup> Court of Appeal Amsterdam, 19 August 2014: ECLI:NL:GHAMS:2014:3435 (*Usenet*), paragraph 3.4.10.

<sup>1122</sup> Request for a preliminary ruling from the *Hoge Raad der Nederlanden* (Netherlands) lodged on 12 June 2019 – *Stichting Brein v. News-Service Europe BV* (Case C-442/19): <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHAMS:2014:3435>.

<sup>1123</sup> Amsterdam Court of Appeal, case number 200.213.005/01, 2 June Ziggo B.V and XS4ALL internet B.V.V stitching Brein (Brein Foundation) <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHAMS:2020:1421>.

<sup>1124</sup> *Brein v. Ziggo*, President of the District Court Central Netherlands (*Vzr. Rechtbank Midden-Nederland*), 8 October 2020, IEF 19476, IT 3269; ECLI:NL:RBMNE:2020:4399 available at <https://www.ie-forum.nl/artikelen/ziggo-xs4all-en-kpn-moeten-mirror-en-proxysites-the-pirate-bay-blokkeren>.

<sup>1125</sup> *Stichting Brein v. Ziggo and XS4ALL*, Court of Appeal Amsterdam (*Gerechtshof Amsterdam*), 2 June 2020, Case No. 200.243.005/01, ECLI:NL:GHAMS:2020:1421. See case report in English at <http://ipkitten.blogspot.com/2020/07/amsterdam-court-of-appeal-issues.html>.



disclose to rightsholders the names and addresses of allegedly infringing end-users. These orders have their legal basis in the “right to information” enshrined in Article 28 of the Dutch Copyright Act and Article 1019 f of the Dutch Code of Civil Procedure, implementing Article 8 of the Enforcement Directive. However, the Dutch Personal Data Authority (*Autoriteit Persoonsgegevens*) has set certain limits on collecting personal data by rightsholders for copyright enforcement purposes. The authority requires a written privacy protocol and sufficient security measures.<sup>1126</sup>

The leading court decision concerning the disclosure of personal data of alleged infringers predates the implementation of the IPRED.<sup>1127</sup> In this decision the Court of Appeal developed a multifactor test (which was validated by the Supreme Court) named the Lycos/Pessers test, that has become the rule in the Netherlands for assessing disclosure requests. Internet providers may be obliged to disclose personal data of alleged infringers if (a) the possibility of the information, viewed in isolation, being unlawful and damaging towards the third party is sufficiently plausible; (b) the third party has a genuine interest in obtaining the name and address details; and (c) it is plausible that in the specific case no less far-reaching possibility exists to retrieve the name and contact details; (d) weighing the interests of the third party, the service provider and the website holder (insofar as known) means that the interest of the third party should prevail. The District Court of The Hague applied the Lycos/Pessers test in a case brought by the Dutch *Eredivisie* (premier league) clubs against a Dutch internet provider that hosted an illegal streaming site.<sup>1128</sup>

#### 6.21.4.7. Compensation criteria adopted by the courts

Dutch courts apply the general rules on compensation for damages to sports event broadcasters. However, there are no cases concerning compensation for damages specifically in cases of infringement of the rights of sports event organisers or broadcasters.

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<sup>1126</sup> “Definitief besluit inzake de verklaring omtrent de rechtmatigheid van online handhaving van intellectuele eigendomsrechten door Dutch FilmWorks B.V.”; z2017-02053, December 5, 2017, available at the following URL: <https://autoriteitpersoonsgegevens.nl/nl/nieuws/ap-geeft-groen-licht-voor-verwerking-persoonsgegevens-door-dutch-filmworks>.

<sup>1127</sup> Hoge Raad (Supreme Court) HR November 25, 2005, NJ 2009, 550, LJN AU4019 (Lycos v. Pessers): <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2005:AU4019>

<sup>1128</sup> *Rechtbank Den Haag* (District Court The Hague) August 17 2016, Case C/09/515172 / KG ZA 16-905, ECLI:NL:RBDHA:2016:9685 (*ADO Den Haag a.o. v. Global Layer*): <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2016:9685>.



#### 6.21.4.8. Criminal sanctions ordered by the courts

Criminal cases related to copyright infringement of sports content have not been found in the Netherlands.

### 6.21.5. Reports and studies

In 2014, the Dutch Asser Institute and the Institute for Information Law jointly produced an extensive study on sports organisers' rights for the European Commission, which discusses online piracy of protected content in the Netherlands.<sup>1129</sup>

As regards awareness campaigns related to online piracy, Stichting Brein has started a public campaign in the Netherlands to warn frequent or large-scale uploaders of illegal content about the consequences of copyright infringement.<sup>1130</sup> Dutch content providers also offer an online resource listing legal content streaming services.<sup>1131</sup>

### 6.21.6. Data compilation

This country report is based on information provided by Dr P. Bernt Hugenholtz, professor of Intellectual Property Law at the University of Amsterdam, Institute for Information Law (IViR).

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<sup>1129</sup> Van Rompuy B. and Margoni T. (2014), "Study on Sports Organisers' Rights in the European Union". Available at SSRN: <https://ssrn.com/abstract=2455313> or <http://dx.doi.org/10.2139/ssrn.2455313>.

<sup>1130</sup> <https://stichtingbrein.nl/brein-start-met-voorlichtingsproject-frevente-of-langdurige-uploaders/>.

<sup>1131</sup> <https://thevore.com/nl/>.



## 6.21.7. Annex

**Table 137. Overview of relevant transposition measures**

EU directives	National law
Conditional Access Directive 98/84/EC	Dutch Criminal Code
Article 5 Conditional Access Directive 98/84/EC – Infringing activities	Article 326c Dutch Criminal Code
InfoSoc Directive 2001/29/EC	Dutch Copyright Act (DCA); Dutch Neighbouring Rights Act (DNRA)
Article 6 InfoSoc – Obligations as to technological measures	Article 29a DCA/Articles 19 and 19a DNRA
Article 8 InfoSoc – Sanctions and remedies	Article 32a DCA
IPRED 2004/48/EC	Dutch Act of March 8 2007 ( <i>Staatsblad</i> 2007, 108) amending, <i>inter alia</i> , the Dutch Copyright Act
Article 6 IPRED – Evidence and Article 7 IPRED – Measures for preserving evidence	Already existed in the Dutch national law
Article 8 IPRED – Right of information	Article 1019f DACP
Article 9 IPRED – Provisional and precautionary measures	Article 1019e DACP
Article 10 IPRED – Corrective measures	N/A
Article 11 IPRED – Injunction	Article 26d of the DCA
Article 12 IPRED – Alternative measures	N/A
Article 13 IPRED – Damages	N/A
E-Commerce Directive 2000/31/EC	Dutch Civil Code/Dutch Criminal Code.
Article 12-15 E-Commerce Directive – Liability of intermediary service providers	Article 6:196c of the Dutch Civil Code/Article 54a of the Dutch Criminal Code
Article 17 E-Commerce Directive – Out-of-court dispute settlement	N/A
Art 20 E-Commerce Directive – Sanctions	N/A
DSM Directive EU 2019/790	<i>Staatsblad</i> 2020, 558, effective 1 January 2021 Article 17 DSM Directive is implemented in new Articles 27c, 27d and 27e of the DCA and in corresponding provisions of the DNRA.

## 6.22. PL – Poland – National legal summary<sup>1132</sup>

### 6.22.1. General legal framework

#### 6.22.1.1. National legislation on copyright<sup>1133</sup>

In Poland, there are several acts that regulate the scope and the enforcement of copyright and related rights in the online environment, as follows:

- The Act of 4 February 1994 on copyright and related rights (O.J.2019.1231 consolidated text of 3 July 2019), referred as “the Copyright Act” (*Ustawa z dnia 4 lutego 1994 r. o prawie autorskim i prawach pokrewnych, Dz.U.2019.1231 t.j. z dnia 2019.07.03*)<sup>1134</sup>
- The Act of 18 July 2002 on rendering services by electronic means, O.J. .2020.344, consolidated text of 3 March 2020 (*Ustawa z dnia 18 lipca 2002 r. o świadczeniu usług drogą elektroniczną, Dz. U. 2002 Nr 144 poz. 1204, t.j. Dz. U. z 2020 r. poz. 344*)<sup>1135</sup>
- The Act of 5 July 2002 on the legal protection of services based on or consisting of, conditional access, (O.J. 2015.1341) (*Ustawa z dnia 5 lipca 2002 r. o ochronie niektórych usług świadczonych drogą elektroniczną opartych lub polegających na dostępie warunkowym, Dz.U. 2002 Nr 126 poz. 1068; t.j. Dz. U. z 2015 r. poz. 1341*)<sup>1136</sup>
- The Code of Civil Procedure (O.J. .2020.1575, consolidated text 14 September 2020) (*Ustawa kodeks postępowania cywilnego z dnia 17 listopada 1964 r.; t.j. Dz.U.2020.1575*)<sup>1137</sup>

In Poland, copyright infringement is considered both as a civil law violation and a criminal offence. The Copyright Act differentiates criminal liability for copyright infringement depending on a form of the unauthorised acts, i.e. whether the unlawful exploitation of copyright is committed on a large-scale or for profit. In particular, according to Article

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<sup>1132</sup> The country report on Poland incorporates the feedback received from Jacek Barski (Ministry of Culture and National Heritage) during the checking round with the national competent institutions.

<sup>1133</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>1134</sup> <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19940240083/U/D19940083Lj.pdf>.

<sup>1135</sup> <http://www.copyright.gov.pl/pages/main-page/law-and-ordinances.php>.

<sup>1136</sup> <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20021441204/U/D20021204Lj.pdf>.

<sup>1137</sup> <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19640430296/U/D19640296Lj.pdf>.

116(2) of the Copyright Act, if an act of unauthorised dissemination of another person's work, performance, phonogram, videogram or broadcast in the original or derivative version is committed to gain economic benefits, the infringer shall be subject to imprisonment for up to three years. If the offence represents a regular source of income for the infringer or if the offender organises or manages a criminal activity, he/she shall be subject to imprisonment for a period from six months to five years. Moreover, according to Article 117(2) of the Copyright Act, if the offence of fixing or reproducing the original or a derivative version of another person's work for the purpose of its dissemination is committed as a regular source of income by the offender or if the infringer organises or manages relevant criminal activity, he/she shall be subject to imprisonment for up to three years. In this case, if an offender acts unintentionally, he/she shall be liable to a financial fine (in practice very low) or to the restriction of personal liberty or imprisonment for up to a year. Also, in all other cases of unauthorised acts which are not committed for economic gain, the liability includes a financial fine, restriction of personal liberty or imprisonment.

#### 6.22.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>1138</sup> has not been transposed in Poland (as at October 2021). On 30 July 2020, the Ministry of Culture and National Heritage announced a “public consultation on implementing the latest EU copyright directives (DSM and Satellite and Cable directives)”<sup>1139</sup> inviting all interested parties to submit proposals, comments and postulates on the implementation of the directives. Replies from businesses, organisations and academic centres were published up to the deadline of 30 September 2020. However, since April 2021 there have been no draft amendments of the Copyright Act or other regulation implementing the DSM Directive.

It should be noted that the Polish Government has brought a legal action with the Court of Justice of the European Union (CJEU) to annul part of Article 17 concerning online content-sharing services, specifically, Articles 17 (4b) and 17 (4c) (action brought on 24 May 2019 – *Republic of Poland v European Parliament and Council of the European Union*, Case C-401/19, 2019/C 270/24).<sup>1140</sup> The government claims that the obligations imposed on online content-sharing services to do not meet the requirement of proportionality and

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<sup>1138</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

<sup>1139</sup> <http://www.prawoautorskie.gov.pl/>.

<sup>1140</sup> CJEU, Case C-401/19: Action brought on 24 May 2019 – Republic of Poland v European Parliament and Council of the European Union, <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:62019CN0401>.



thus violate the right to freedom of expression. The opinion of the Advocate General was published on 15 July 2021.<sup>1141</sup>

**Table 138. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	Not transposed
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	Copyright Act <sup>1142</sup> Code of Civil Procedure <sup>1143</sup>
<b>Information Society (InfoSoc) Directive</b>	Copyright Act <sup>1144</sup>
<b>E-Commerce Directive</b>	Act of 18 July 2002 on rendering services by electronic means (O.J. 2020.344 consolidated text of 3 March 2020) <sup>1145</sup> Regulation of the Ministry of Economy of 17 August 2010 on the establishment of a contact point for administration and a contact point for service providers and service recipients (O.J. 2010 No 171 section. 1152)
<b>Conditional Access Directive</b>	Act of 5 July 2002 on the legal protection of services based on or consisting of conditional access (O.J. 2015 r. section 1341)

Source: Polish response to European Audiovisual Observatory standardised survey

## 6.22.2. National rules applicable to audiovisual sports content

### 6.22.2.1. Legal definitions of “broadcaster” and “sports event organiser”

In Polish law, a “broadcaster” is defined by Article 4(5) of the Act of 29 December 1992 on radio and television broadcasting<sup>1146</sup> as “a natural person, a legal person or a commercial partnership which creates and compiles a programme and distributes or transmits it to third parties for distribution”.

Article 97 of the Copyright Law does not contain a definition of the term “broadcaster”, but clarifies that a “television broadcaster” should be considered as an

<sup>1141</sup> Opinion of Advocate General Saugmandsgaard Øe, Case C-401/19, 15 July 2021, <https://curia.europa.eu/juris/document/document.jsf?docid=244201&doclang=en>.

<sup>1142</sup> <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19940240083/U/D19940083Lj.pdf>.

<sup>1143</sup> <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19640430296/U/D19640296Lj.pdf>.

<sup>1144</sup> <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19940240083/U/D19940083Lj.pdf>.

<sup>1145</sup> <http://www.copyright.gov.pl/pages/main-page/law-and-ordinances.php>.

<sup>1146</sup> O.J.2020.805 consolidated text, 5 May 2020.





entity which decides on the content of the programme and initiates its broadcasting (produces or sets up programmes and is responsible for the programme content). A broadcaster is also an entity which broadcasts its programmes via the internet.

There is no legal definition for “sports event organiser” in Polish law. However, a definition can be inferred, based on the provisions of the Act on the safety of mass events of 20 March 2009, which contains the definitions of “organiser”, “mass sports event” and “football match”.<sup>1147</sup>

#### 6.22.2.2. Legal protection related to sports events

A sports event itself is not protected as an object of copyright or related rights under Polish copyright law, as also confirmed by the Regional Administrative Court in Warsaw in a judgment of 20 February 2015. In this case, the court held that the broadcast of a sports event is the mere representation of the event, providing the image and sound by technical means such that the observer can follow it in real time.<sup>1148</sup> No original content is created, as there is only a reflection of the image of what is happening during the sports event. Thus, according to this approach, a sports event (e.g. a football match) does not constitute a copyrighted work.

However, due to the possibility of combining images from several cameras, framing, displaying replays of individual actions, using a script or music, broadcasts of sports events may have specific creative elements. Under certain conditions, some of them may qualify as audiovisual works protected under Article 69 of the Copyright Act.

As confirmed by case law, recordings of sports events can be protected as videograms, in which one type of related rights (not copyright) apply. A videogram – according to the definition provided in Article 94(2) of the Copyright Act – is the first fixation of a sequence of moving images, with or without sound, whether or not it constitutes an audiovisual work.<sup>1149</sup> According to Article 94(4) of the Copyright Act, the producer of a videogram (or phonogram) has the exclusive right to dispose of and use the videogram for (i) reproduction by a specific technique; (ii) distribution; (iii) rental or lending of copies; (iv) making the videogram available to the public in such a way that

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<sup>1147</sup> An “organiser” is a legal or natural person, or an organisational unit without legal personality, conducting a mass event (Article 3(9)); a “mass sports event” is one which concerns sports competition, organised in a stadium or other facility which is not a building, where the number of seats for persons made available by the organiser is not less than 1 000, and in the case of a sports hall or other building enabling the conducting of a mass event not less than 300 (Article 3 (4)); a “football match” is a mass sports event in the form of a competition in the discipline of football, organised in a stadium or other sports facility, where the number of available places for people – determined by the organiser following the provisions of the building law and fire safety regulations – is at least 1 000 (Article 3 (4)).

<sup>1148</sup> Judgment of February 20 2015, III SA/Wa 1078/14, OP 2015/3/255-258.

<sup>1149</sup> The decision of the Supreme Administrative Court of 24 July 2015, II FSK 2379/13: <http://orzeczenia.nsa.gov.pl/doc/FC77D34934>



anyone can access it at the place and time of their choice. In case of broadcasting, rebroadcasting or communication to the public of a videogram already distributed, the producer is entitled to appropriate remuneration. The Copyright Act presumes that the producer of a videogram is the person/entity under whose name or business name the videogram was first made (Article 94 (3)).

In addition, the Copyright Act protects transmissions of sports event as broadcasts. According to Article 97 of the Copyright Act, broadcasting organisations have the exclusive right to dispose of and use their own programme broadcasts provided that they are (i) fixation; (ii) reproduction by specific technique; (iii) broadcasting by a television broadcasting organisation; (iv) rebroadcasting; (v) distribution; (iv) communication to the public in places accessible to the public for an entrance fee; (vii) making their fixations available in such a way that anyone can access the work at a place and time of their choice (making the programme available online).

The aforementioned article applies to broadcasts of programmes by television broadcasters having their seat in Poland or in the European Economic Area, as well as to those protected under international agreements, to the extent of the protection granted under these agreements (Article 99 of the Copyright Act).

Most legal actions for copyright infringement are prosecuted at the request of a copyright holder. Depending on the actual situation related to the acquisition of copyright, this may be the author of the videogram, the producer, the broadcaster, or the sports event organiser (in the case where it holds rights as a producer, for example). As a default rule under the Copyright Act, the producer of an audiovisual work (Article 70) and the producer of a videogram are presumed, by virtue of an exploitation contract for the creation of the work or of an existing work, to acquire exclusive economic rights for the exploitation of these works and are entitled to claim copyright infringement and to take legal action. Moreover, licensees are not entitled to claim copyright infringement. Finally, it should be noted that certain types of The types of qualified criminal offences are prosecuted *ex officio*, in particular where there is a condition of making the infringement a regular source of income. In these cases, prosecutors are authorised to initiate criminal proceedings.

#### 6.22.2.3. Other specific rules applicable to sports events

There is no specific legal protection for sports event organisers in Poland. The general regulation provided in the Act of 25 June 2010 on sport (O.J. 2010 No. 127 section 857) does not include any relevant provisions regarding legal protection for sports event organisers. No specific rules are provided under Polish law concerning the use of sports content in social media.

**Table 139. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
Broadcaster	Yes	Related rights
Sports event organiser	No	Non-statutory rights

Source: Polish response to European Audiovisual Observatory standardised survey

## 6.22.3. Remedies and sanctions applicable in the event of infringement

### 6.22.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

The provisions on disclosing evidence, means of evidence, requests for information and all measures provided by Articles 6 to 13 of the IPRED were implemented in national law (Articles 479<sup>96</sup> to 479<sup>121</sup> of the Code of Civil Procedure, and Article 79(1) to (4) of the Copyright Act respectively), and are directly applicable in online infringement cases, including online piracy of audiovisual sports content.

In particular, according to Article 79(1) of the Copyright Act, a rightsholder whose economic rights have been infringed, may request the person who infringed those rights: 1) to cease the infringement; 2) to remedy the effects of the infringement; 3) to compensate for any damage caused: a) under the generally applicable law, or, b) by paying an amount corresponding to twice or, where the infringement is intentional, three times the amount<sup>1150</sup> of the relevant remuneration which, at the time it is claimed, would have been due to the rightsholder for authorising the use of the work; (4) to remit any profit obtained.

In addition, the removal and circumvention of technological protection measures, the unauthorised removal or alteration of any electronic information on copyright or related rights and the criminal liability are provided by national law, after the transposition of the InfoSoc Directive into the Copyright Act. In particular, Article 79(6)

<sup>1150</sup> This provision lost force as of 1 July 2015 under the decision of the Constitutional Tribunal dated 23 June 2015, case file No. SK 32/14 (*Dziennik Ustaw*, item 932) to the extent that the rightsholder whose economic rights as an author have been infringed may claim compensation for any damage caused up to an amount corresponding – where the infringement is intentional – to three times the amount of the corresponding remuneration.



and (7) of the Copyright Act provide for civil liability in the case of unauthorised removal or circumvention of technological protection and the unauthorised removal or alteration of any electronic information on copyright. The civil claims provided in Article 79(1) of the Copyright Act are available in such cases.

Furthermore, sanctions and remedies are provided by the Act of 5 July 2002 on the legal protection of services based on or consisting of conditional access. According to Article 6 of the aforementioned act, whoever provides unauthorised services and/or manufactures illicit devices or places them on the market with a view to their use, is subject to the penalty of imprisonment for a term up to three years. Sanctions are also provided for whoever, in order to obtain a material profit, possesses or uses a prohibited device. In this case, the sanctions consist in a fine, the penalty of limitation of liberty or imprisonment for up to one year and, if the infringer uses a prohibited device exclusively for his/her own purposes, he/she shall be subject to a fine (Article 7). The court shall order the forfeiture of illicit devices constituting the objects of the acts referred to in Articles 6 or 7, even if they are not the property of the perpetrator (Article 8). All these sanctions and remedies can also be applied to cases concerning online piracy of audiovisual sports content, as the act applies to “protected services”, which are defined as “broadcasting and distribution of television and radio programmes within the meaning of the provisions on broadcasting”.

In addition to civil liability, Article 118<sup>1</sup> of the Copyright Act provides for criminal liability for anyone who manufactures devices or their components used to unlawfully remove or circumvent effective technological measures preventing the communication to the public, the recording or reproduction of works or subject matter of related rights, or who trades in or advertises such devices or their components for sale or rental purposes, or who possesses, keeps or uses such devices or their components. Furthermore, Article 119 of the Copyright Act provides for criminal liability for anyone who prevents or hinders the exercise of the right to monitor the use of a work, performance, phonogram or videogram.

#### 6.22.3.2. National bodies with competences on copyright enforcement

In Poland, there is no national authority other than judicial bodies with specific competences to address copyright infringements other than courts.<sup>1151</sup>

#### 6.22.3.3. Codes of conduct and Memorandums of Understanding

No code of conduct and/or Memorandum of Understanding or similar document has been detected in Poland regarding the enforcement of intellectual property rights and the fight against piracy at the national level.

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<sup>1151</sup> Specialised civil intellectual property courts have exclusive jurisdiction to hear copyright infringement cases. Parties may, however, also submit infringement disputes to an arbitration court.

However, an interesting initiative was launched in 2018 by the Sygnał Association<sup>1152</sup> to act in favour of the IP rights of broadcasters, distributors, licensors, recipients of television programmes and other multimedia content, the so-called “Warsaw Declaration”.<sup>1153</sup> The Warsaw Declaration was adopted by the participants of the International Content Protection Summit organised by the Sygnał Association on 18-19 October 2018 in Warsaw, including national and European radio and television broadcasters.<sup>1154</sup> It represents a general agreement between participating organisations, institutions and companies (from all over Europe, primarily from Poland and other EU member states), for future cooperation involved in protecting IP rights and the fight against online piracy.

#### 6.22.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

Polish law does not provide for uniform formal or procedural rules governing the notice and take-down procedures. Individual service providers are responsible for taking their decisions individually and autonomously based on individual notices.

The general rules for the notice and take-down procedure in the case of illegal cached content are set out in Article 13(2) of the Act of 18 July 2002 on rendering services by electronic means (which transposes Articles 12 to 15 of the E-Commerce Directive). According to this article, a service provider providing caching services must remove the data or make access to the stored data impossible immediately after receiving the message that 1) the data have been removed from the initial source of transmission or access to them has been rendered impossible, or 2) a court or any other competent authority has ordered that the data be removed or access to them rendered impossible.

The notice and take-down procedure for hosted illegal content provided for in Article 14 of the Act requires a service provider providing hosting services not to be aware of the illegal nature of the data or activity related to it and, in case of “having been officially informed or having received a credible notice on the illegal nature of the data or the activity related to it”, to make access to the data immediately impossible. A service provider must decide whether to consider a notice as a “credible notice”, since the law does not provide any further definition or explanation of these terms..

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<sup>1152</sup> The Sygnał Association acts in favour of intellectual property rights of broadcasters, distributors, licensors, recipients of TV programmes and other multimedia content. Currently, it comprises 19 media and telecommunications companies operating in Poland or forming part of international corporations. These include broadcasters, content developers, operators of digital platforms and companies from the IT sector. The association was established in 2001. See more information at <https://sygnal.org.pl>

<sup>1153</sup> <https://sygnal.org.pl/en/the-warsaw-declaration/>.

<sup>1154</sup>

[http://www.krrit.gov.pl/Data/Files/\\_public/Portals/0/stanowiska/st2011/10112011\\_stan\\_zielona\\_ksiega.pdf](http://www.krrit.gov.pl/Data/Files/_public/Portals/0/stanowiska/st2011/10112011_stan_zielona_ksiega.pdf).

### 6.22.3.5. Removal and blocking orders

Injunction procedures aimed at securing enforcement of copyright and related rights are provided in the Code of Civil Procedure. The procedure is regulated by the following provisions:

- Article 730<sup>1</sup> under which a provisional measure may be sought in order to secure the claim (the security). It is available if the applicant demonstrates that the following conditions are met: i) a high probability of the infringement having occurred; ii) a legal interest in securing the claim exists – the lack of temporary protection against the infringements will result in the applicant suffering irreparable harm.
- Articles 479<sup>106</sup> to 479,<sup>111</sup> which govern a procedure for disclosure or submission of evidence;
- Articles 479<sup>96</sup> to 479,<sup>105</sup> which govern a procedure for securing a means of evidence;
- Articles 479<sup>112</sup> to 479,<sup>121</sup> which govern the procedure for a request for information.

All these measures and procedures are also available for infringement of copyright and related rights in online sports audiovisual content.

However, blocking injunctions towards internet service providers (ISPs) are generally not used in Poland, especially as there is no legal basis for them because Article 8(3) of the InfoSoc Directive has not been implemented in Polish law by a specific provision granting a legal basis in this respect.

National case law also confirms that courts do not apply measures such as dynamic injunctions (that would allow a rightsholder to extend the main injunction order against mirror websites) or de-indexing injunctions or live blocking injunctions.<sup>1155</sup>

In one of the cases, the copyright holders sought injunctive relief against the infringement of their copyrights, requesting the judge to order ISPs to block users' access to a website providing protected content for the duration of the proceedings.<sup>1156</sup> The court dismissed the request, arguing that imposing the requested obligation on ISPs in the manner requested by the applicant constitutes a violation of Article 755 §1 (1) of the Code of Civil Procedure. Under this provision, the court may equate the rights and obligations of the parties or participants to the proceedings for the duration of the proceedings, but the ISPs were not parties to the proceedings. As the court argued, such a conclusion also

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<sup>1155</sup> In a precedent-setting domestic case involving copyright infringement by a popular piracy site, an attempt to obtain a court order to block a website containing copyright-infringing content has proved unsuccessful, according to the order of Regional Court in Warsaw of 17 November 2016, [http://orzeczenia.ms.gov.pl/content/\\$N/154505000006027\\_XX\\_GC\\_001004\\_2012\\_Uz\\_2016-11-17\\_001](http://orzeczenia.ms.gov.pl/content/$N/154505000006027_XX_GC_001004_2012_Uz_2016-11-17_001). See also in Section 6.1.4. of this country report.

<sup>1156</sup> Order of Regional Court in Warsaw of 17 November 2016, [http://orzeczenia.ms.gov.pl/content/\\$N/154505000006027\\_XX\\_GC\\_001004\\_2012\\_Uz\\_2016-11-17\\_001](http://orzeczenia.ms.gov.pl/content/$N/154505000006027_XX_GC_001004_2012_Uz_2016-11-17_001).

follows from the CJEU C-314/12 judgment in *UPC Telekabel Wien*,<sup>1157</sup> which confirms that the addressee of such an obligation – imposed by the provisions on injunction relief – must be allowed to demonstrate to the court that the measures it takes are adequate to avoid the result of the copyright infringement. As ISPs are not parties to these proceedings, they cannot appeal against the court’s decision.

#### 6.22.3.6. Measures against end-users

Measures against end-users as injunctive relief in the form of ordering ISPs to block internet users’ access to a website are not available in Poland, as confirmed by the Regional Court in Warsaw.<sup>1158</sup> Regarding data collection on users, in the case of an infringement, a rightsholder may request the court to oblige an alleged infringer to disclose lists or databases of personal data under the general EU General Data Protection Regulation (GDPR) rules on the access and processing of personal data and the provisions of the Act of 18 July on rendering services by electronic means.

#### 6.22.3.7. Criminal sanctions

The types of qualified criminal offences specified in the Copyright Act are prosecuted *ex officio*. As previously mentioned, these are qualified types of offences where there is a condition of making the offense a regular source of income (Article 116(3) and Article 117(2) of the Copyright Act). In these cases, prosecutors are entitled to initiate criminal proceedings.

In case of copyright infringement, the Copyright Act provides for the following criminal sanctions: (i) a fine, restriction of personal liberty or imprisonment for up to three years for the following activities: manufacturing devices or their components used for unlawful removal or circumvention of effective technological measures preventing communication to the public; the recording or reproduction of works or objects of related rights or the trade in such devices or their components; advertising them for sale or rental purposes (Article 118<sup>1</sup>(1)); (ii) a fine, restriction of personal liberty, or imprisonment for up to a year for: possessing, keeping or using devices or their components used for unlawful removal or circumvention of effective technological measures preventing communication to the public (Article 118<sup>1</sup> (1)); a fine, restriction of personal liberty, or imprisonment for up to a year for preventing or hindering the exercise of the right to monitor the use of a work, performance, phonogram or videogram or refusing to provide the information referred to in Article 47 (Article 119).

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<sup>1157</sup> CJEU, C-314/12 - *UPC Telekabel Wien*, 27 March 2014, <https://curia.europa.eu/juris/liste.jsf?num=C-314/12>.

<sup>1158</sup> *Op. cit.* XX GC 1004/12.



**Table 140. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No, national copyright law
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial bodies)	No
Entitlement to take legal action	Yes, (by rightsholders)
Codes of conduct	No
Specific proceedings	No
Specific remedies	No

Source: Polish response to European Audiovisual Observatory standardised survey

**Table 141. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	Yes
Removal and blocking injunctions	No
Dynamic and/or live blocking injunctions	No
De-indexing injunctions	No
Damages and orders to cease and desist	Yes
Administrative offence and remedies	No
Notice and take-down procedures	Yes

Source: Polish response to European Audiovisual Observatory standardised survey

## 6.22.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against





end-users and criminal sanctions, in relation to online infringement of audiovisual sports content.

**Table 142. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
<b>Communication to the public</b>	There is an illegal communication to the public when a website, in particular, transmits football matches without authorisation in order to gain a financial benefit.	Regional Court in Świdnica, II Criminal Division, decision of 30 September 2016, II K 618/15  Regional Court in Wrocław, V Criminal Division, decision of 24 February 2015
<b>Hosting providers' knowledge and awareness of illegal activity</b>	In order to have knowledge, the provider has to be aware of a real possibility that internet users are performing illegal activities, but does not take appropriate action, despite employing staff who also deal with the removal of infringing activity and using automatic filtering of the content.	High Court decision of 30 September 2016, I C SK 598/15
<b>Notice and take-down</b>	The person requesting the blocking of access to the data should provide the hosting provider with such information based on which the unlawful character of the data or related activities is made evident.  The form in which the message is provided is fundamental.  The ISP is not obliged to verify the legality of the content.	Appeal Court in Warsaw, decision of 18 April 2017, I ACa 55/16, LEX nr 2317742  Regional Court in Siedlce, decision of 28 November 2013, I C 1113/12, LEX No. 1717834  Appeal Court in Gdańsk, decision of 27 November 2013, I ACa 748/13, LEX No. 1415893
<b>Measures against end-users</b>	Measures against end-users are not applicable.	Regional Court in Warsaw, decision of 17 November 2016, XX GC 1004/12
<b>Criminal sanctions</b>	Criminal sanctions are applied in cases regarding the infringement of copyright, in particular unauthorised public transmission and communication to the public.	Regional Court in Wrocław, V Criminal Division, default decision of 24 February 2015  Regional Court in Świdnica, II Criminal Division, decision of 30 September 2016, II K 618/15  Regional Court in Gdańsk, II Criminal Division, decision of 5 April 2018, II K 942/17

Source: Polish response to European Audiovisual Observatory standardised survey



#### 6.22.4.1. Communication to the public

Some case law (mainly decisions of regional courts) based on provisions of the Copyright Act providing criminal liability for the infringement of copyright and related rights of sports event broadcasters are relevant. Thus, for example, a case in the Regional Court in Świdnica concerned the infringement of copyright as provided by Article 116 of the Copyright Act on the illegal communication to the public via the internet of professional boxing.<sup>1159</sup> In this case, an individual distributed without authorisation and in order to derive financial benefits a broadcast transmitting professional boxing in real time and in the original version, causing losses in the total amount of PLN 420 000. The court found the individual guilty of copyright infringement under Article 116 of the Copyright Act, and a penalty of one year and six months of imprisonment was imposed.

Another case in the Court of Wrocław concerned the offence provided by Article 116(2) of the Copyright Act, concerning the unauthorised public transmission and communication to the public, in order to achieve a financial benefit, of a football match of the Champions League infringing the rights of CANAL+ portHD (a fine of eighty daily rates<sup>1160</sup> was ordered, assuming the amount of one daily rate in the amount of PLN 10).<sup>1161</sup>

#### 6.22.4.2. Online infringement of audiovisual sports content

With regard to the protection of sports event organisers, some relevant national cases can be mentioned. Thus, in a decision concerning the unauthorised transmission of sports content on the internet allegedly in violation of the rights of Cyfrowy Polsat television, the court found that the defendant had created a potential opportunity for a wider and indefinite circle of people to get acquainted with the presented event without any rights to “disseminate” the content publicly, and established an infringement under Article 116 of the Copyright Act. The defendant was sentenced to one year and six months imprisonment.<sup>1162</sup> As indicated in the decision, in order to meet the criterion of “dissemination” specified in Article 116, paragraph 1 of the Copyright Act, it is not necessary for a wider circle of people to become acquainted with the work, and the mere fact of creating a possibility to become acquainted with the work is sufficient to qualify the act as an infringement.

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<sup>1159</sup> Decision of the Regional Court in Świdnica, II Criminal Division of 30 September 2016, II K 618/15: <https://sip.lex.pl/orzeczenia-i-pisma-urzedowe/orzeczenia-sadow/ii-k-618-15-wyrok-sadu-rejonowego-w-swidnicy-522344126>.

<sup>1160</sup> Monetary fines are usually calculated in daily rates. The amount of the daily rate is derived from the potentially available net daily income (in order to ensure that the fine applies to everyone equally).

<sup>1161</sup> Default Decision of the Regional Court in Wrocław, V Criminal Division of 24 February 2015, V K 365/15, [http://orzeczenia.ms.gov.pl/content/transmisja\\$0020sportowa/155025500002506\\_V\\_K\\_000365\\_2015\\_Uz\\_2016-02-18\\_001](http://orzeczenia.ms.gov.pl/content/transmisja$0020sportowa/155025500002506_V_K_000365_2015_Uz_2016-02-18_001).

<sup>1162</sup> Decision of the Regional Court in Gdańsk, II Criminal Division of 5 April 2018, II K 942/17 <https://www.saos.org.pl/judgments/339085>.

#### 6.22.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

Article 14 of the E-Commerce Directive was transposed into Article 14 of the Act of 18 July on rendering services by electronic means, which only requires that a hosting services provider “did not have knowledge of the illegal nature of the data or the activity related to it”. Polish courts provide for additional conditions that must be met to prove that ISPs did have actual knowledge of the illegal activity.

Thus, according to a decision of the High Court of 30 September 2016,<sup>1163</sup> the hosting service provider’s knowledge of the illegal activity can be established, provided that in view of the experience related to its previous activity in the field of hosting services it should have been aware of a real possibility that internet users perform illegal activities, and if it does not take appropriate action, beyond employing staff who also deal with the removal of infringing activity and the use of automatic content filtering.

#### 6.22.4.4. Notice and take-down requirements

The notification procedure of a copyright infringement of audiovisual sports content under Article 14 of the Act on rendering services by electronic means should involve providing a hosting provider with official information or credible notification on the unlawful nature of the hosted content or the activity related to it.

The case law provides the general requirements that need to be fulfilled for copyright infringement proceedings:

(i) The hosting provider is not obliged to conduct a detailed investigation to verify whether the information on the unlawful character of data or related activities is reliable. Therefore, the person requesting the blocking of access to the data should provide the hosting provider with such information based on which the unlawful character of the data or related activities becomes evident. Such information should allow for the conclusion that such person has reasonable reasons to claim the unlawful character of the data.<sup>1164</sup>

(ii) The form in which the credible notice is given is not regulated. It may be submitted to the service provider both in writing and as an e-mail message or through a contact form made available by the entity providing the hosting services.

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<sup>1163</sup> A decision of High Court of 30 September 2016, I C SK 598/15.

<sup>1164</sup> Appeal Court decision in Warsaw of 18 April 2017, I ACa 55/16, LEX nr 2317742:

[http://orzeczenia.waw.sa.gov.pl/content/\\$N/154500000000503\\_I\\_ACa\\_000055\\_2016\\_Uz\\_2017-04-18\\_001](http://orzeczenia.waw.sa.gov.pl/content/$N/154500000000503_I_ACa_000055_2016_Uz_2017-04-18_001).



The source of a credible notice is arbitrary and, therefore, its sender may be both the victim himself/herself and a third party entirely unrelated to the stored data. The hosting provider itself can also obtain a credible notice in connection with its activities.<sup>1165</sup>

(iii) An ISP is not obliged to verify information about the legitimacy of a request received from a person requesting the removal of the infringing content. Therefore, the information constituting the basis for immediately disabling access to the content in question should be reliable without the need to make any assessment or verify the veracity of the request.<sup>1166</sup>

#### 6.22.4.5. Removal and blocking orders

As Article 8(3) of the InfoSoc Directive has not been implemented in Poland through a specific provision, there is no legal basis for applying to the court to order blocking orders for ISPs/search engines. Generally speaking, Polish courts do not issue removal or blocking orders to ISPs/ search engines.

A court may, however, under available remedies, order the removal of infringing content by an infringer under Article 79(1) of the Copyright Act, which provides a claim in order to remedy the effects of the infringement.

In this context, an interesting decision by the Appeal Court in Kraków of 18 September 2017 is worth noting, in which the court obliged the ISPs to delete the user account containing the link to infringing content.<sup>1167</sup> In this particular case, the court found the ISP to be liable for contributing to the copyright infringement. The service provider was not playing a passive role, as it charged for the transfer of content and so, the ISP's liability was not excluded under general rules applicable for ISPs. However, this court decision cannot be considered as confirming a general possibility for addressing removal or blocking orders for ISPs.

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<sup>1165</sup> Regional Court in Siedlce decision of 28 November 2013, I C 1113/12, LEX nr 1717834: <https://sip.lex.pl/orzeczenia-i-pisma-urzedowe/orzeczenia-sadow/i-c-1113-12-wyrok-sadu-okregowego-w-siedlce-521811530>.

<sup>1166</sup> Appeal Court in Gdańsk, decision of 27 November 2013, I ACa 748/13, LEX No. 1415893: <https://sip.lex.pl/orzeczenia-i-pisma-urzedowe/orzeczenia-sadow/i-aca-748-13-wyrok-sadu-apelacyjnego-w-gdansk-521509589>.

<sup>1167</sup> Appeal Court in Kraków, the decision of 18 September 2017, I Ca 1494/15 should be notified, [http://orzeczenia.krakow.sa.gov.pl/details/\\$N/15200000000503\\_I\\_ACa\\_001494\\_2015\\_Uz\\_2017-09-18\\_001](http://orzeczenia.krakow.sa.gov.pl/details/$N/15200000000503_I_ACa_001494_2015_Uz_2017-09-18_001).



#### 6.22.4.6. Measures against end-users ordered by the courts

As the order of the Regional Court in Warsaw of 17 November 2016 confirmed, such measures as injunctive relief in the form of ordering ISPs to block internet users' access to a website providing protected content are not available in Poland.<sup>1168</sup>

#### 6.22.4.7. Compensation criteria adopted by the courts

In principle, the Copyright Act (Article 79 (1) (3) (b)) offers two models to compensate damage incurred by sports event broadcasters in the case of infringement of their copyright and related rights:

- Compensation for any damage according to generally applicable provisions of law. This model is based on “general principles” of civil law (relevant for all claims for damages). It requires: 1) evidence of the degree of damage suffered; 2) proof of the culpability of the infringer; and 3) the existence of a direct link between the infringing act and the damage suffered by the injured party.
- Payment of an amount corresponding to double or, where the infringement is intentional, triple the amount of the relevant remuneration that would, at the time it is claimed, have been due to the rightsholder for authorising the use of the work. This “lump sum” option does not require proofs of actual loss suffered due to the infringement. Thus, it remains controversial as having more of a punitive character.

For that reason, the provision that allows the payment of an amount corresponding to three times the amount of the relevant remuneration that would, at the time claimed, have been due to the rightsholder for authorising the use of the work (where the infringement is intentional) was considered unconstitutional by the decision of the Polish Constitutional Tribunal, dated 23 June 2015.<sup>1169</sup> The part of the provision which allows a request for twice the amount of the licence fee (for a non-intentional infringement) remains valid because this issue was not covered by the scope of the constitutional complaint. Following this decision, the courts are not awarding damages of three times the appropriate licence fee. As Article 79(1) (3) (b) was introduced into the Copyright Act as a result of the implementation of Article 13 of the IPRED, the issue of compliance of the aforementioned provision was subject to a preliminary question before the CJEU.<sup>1170</sup> The court found that the provision in question of the Copyright Act was not compatible with EU law

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<sup>1168</sup> Regional Court in Warsaw, decision of 17 November 2016, XX GC 1004/12.

[http://orzeczenia.ms.gov.pl/content/\\$N/154505000006027\\_XX\\_GC\\_001004\\_2012\\_Uz\\_2016-11-17\\_001](http://orzeczenia.ms.gov.pl/content/$N/154505000006027_XX_GC_001004_2012_Uz_2016-11-17_001).

<sup>1169</sup> Polish Constitutional Tribunal, decision of 23 June 2015, No. SK 32/14.

<sup>1170</sup> C-367/15, *Stowarzyszenie 'Oławska Telewizja Kablowa' v. Stowarzyszenie Filmowców Polskich*, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-367/15>.



#### 6.22.4.8. Criminal sanctions ordered by the courts

Polish courts confirm the application of criminal sanctions to online piracy of audiovisual sports content more often than the civil sanctions, under the provision of Article 116(2) of the Copyright Act: (i) a criminal sanction was applied in a case regarding the unauthorised public transmission and communication to the public of a football match of the Champions League infringing the rights of CANAL+ portHD (a fine of eighty daily rates assuming the amount of one daily rate in the amount of PLN 10):<sup>1171</sup> (ii) a criminal sanction was ordered in a case regarding illegal communication to the public through an internet website;<sup>1172</sup> (iii) a case regarding the unauthorised transmission of internet sports content infringing the rights of Cyfrowy Polsat television.<sup>1173</sup>

#### 6.22.5. Reports and studies

From a non-legal perspective, three studies are relevant concerning online piracy of protected content in Poland:

- The report of the International Content Protection Summit, held in Warsaw in 2018, identifies the biggest current challenges in relation to piracy as: the new technologies used in illegal content distribution (e.g. internet Protocol Television - IPTV); the use of cryptocurrencies as a new payment method; and the consequences of the lack of a unified European law and incomplete implementation of individual directives in some countries.<sup>1174</sup>
- “internet Piracy – Losses to the Culture and Economy: Analysis of the internet Piracy Impact of the phenomenon on the Polish Economy, on Selected Cultural Markets, Deloitte”, Warsaw, 2017<sup>1175</sup>
- “Analysis of the impact of video content piracy on the economy in Poland”, PwC, 2014 Circuits of culture. Social circulation of content, Research report, Warsaw 2012<sup>1176</sup>.

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<sup>1171</sup> Regional Court in Wrocław, V Criminal Division, default decision of 24 February 2015.

<sup>1172</sup> Regional Court in Świdnica, II Criminal Division, decision of 30 September 2016, II K 618/15: <https://sip.lex.pl/#/jurisprudence/522344126>.

<sup>1173</sup> Regional Court in Gdańsk, II Criminal Division, decision of 5 April 2018, II K 942/17: <https://www.saos.org.pl/judgments/339085>.

<sup>1174</sup> <https://sygnal.org.pl/wp-content/uploads/2019/06/20181207-ICPS-PL-www.pdf>.

<sup>1175</sup> *Piractwo w Internecie – straty dla kultury i gospodarki. Analiza wpływu zjawiska piractwa internetowego na gospodarkę Polski na wybranych rynkach kultury*, Warsaw, 2017: <https://sygnal.org.pl/en/media-piracy/the-impact-of-online-piracy/>.

<sup>1176</sup> *Analiza wpływu zjawiska piractwa treści wideo na gospodarkę w Polsce*, PwC, 2014. *Obiegi kultury. Społeczna cyrkulacja treści, Raport z badań*, Centrum Cyfrowe, Warsaw, 2012: [https://sygnal.org.pl/wp-content/uploads/2020/08/2020\\_08\\_13\\_roadmap.pdf](https://sygnal.org.pl/wp-content/uploads/2020/08/2020_08_13_roadmap.pdf).

The aforementioned report of the International Content Protection Summit in Warsaw includes topics and issues relevant to the illegal online transmission of sports events:

- a summary of the workshop on issues related to free-to-air vs. pay-tv, live streaming and pay-per-view: control strategies, main challenges faced by sports programmes and live events requiring appropriate legal and other tools to protect them effectively (p. 27)
- a short report on the round-table discussion on technological challenges: set-top boxes (STB), IPTV, Smart TV, applications which identify IPTV technology as potentially the most serious threat to legitimate businesses and the threat of lost profits for broadcasters (p. 28)
- a short report on the round-table discussion “Follow the money”: payment providers and operators, advertising on pirate sites, media houses, e-commerce platforms, blacklisting/whitelisting, which identifies a “follow the money” approach as an important tool for the anti-piracy plan. The relevant actions should include: ISPs blocking user traffic to infringing sites; advertising providers preventing adverts on illegal websites; payment processors blocking pirate revenue flowing from illegal services, among others (p.26).

Besides, concerning the technologies and business models used for the illegal streaming of sports content, the above-mentioned report includes references to STB, IPTV, Smart TV, and applications that identify IPTV. The problem of using these technologies was addressed by Marcin Przasnyski, Managing Director of Anti-Piracy Protection in the presentation “The markets for pirated content in Central and Eastern Europe”. In particular, Mr Przasnyski commented that “currently, across the region, it is not piracy based on STB, IPTV or KODI that generates the biggest losses for legitimate businesses, but rather, the streaming and hosting of audiovisual files” (p. 13).<sup>1177</sup>

According to these data, in Poland in 2018 there was a significant number of websites with pirated content. Both the streaming and hosting of pirated content was very popular in Poland in 2018. There were as many as 721 piracy websites, 15.5 million regular users and 77 million visits a month.<sup>1178</sup>

No recent study on the legal offer of online sports content was detected. Also, there are no national studies on online sports broadcasting and piracy in this area.

Awareness-raising actions related to the fight against online piracy include the following:

- A national training programme for police officers and prosecutors under the name “piracy.tv” organised by the Sygnał Association in cooperation with the Polish Police Headquarters involving all voivodeships in the country. The training

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<sup>1177</sup> <https://sygnał.org.pl/wp-content/uploads/2019/06/20181207-ICPS-PL-www.pdf>.

<sup>1178</sup> <https://antipiracyprotection.com/level-of-piracy-in-central-and-eastern-europe/>.



programme focused on intellectual property infringement on the internet and methods of operation of illegal websites with streaming and card sharing, IPTV and guidelines on how to target criminals by following the money in piracy cases.

- Educational actions aimed at raising awareness among parties involved in combatting online piracy, including the police: 1) training materials entitled “Stealing TV content on the internet. Methodology of proceedings” developed by the Sygnał Association;<sup>1179</sup> 2) “The methodology of police work in detecting and combating intellectual piracy on the internet – a document of the internet Group” in ICT crime, ed. J Kosiński 2007; (iii) publications in national newspapers regarding online piracy: for instance, How to fight piracy? Sternowski: “Follow the Money” strategy brings results (*Jak walczyć z piractwem? Sternowski: Strategia “Follow the Money” przynosi efekty*).<sup>1180</sup>

The most active association in the field of online piracy of audiovisual sports content is the Sygnał Association which represents the intellectual property interests of the rights of broadcasters, distributors, licensors and recipients of television programmes and other multimedia content.<sup>1181</sup> This association takes actions and prepares position papers and publications addressing problems related to online piracy of audiovisual sports content.

## 6.22.6. Data compilation

This country report is based on data compiled by Justyna Ożegalska-Trybalska, an associate professor at the Chair of Intellectual Property Law of Jagiellonian University in Kraków, specialising in patent law, copyright and internet law.

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<sup>1179</sup> “Kradzież treści TV w Internecie. Metodyka postępowania” <https://sygnał.org.pl/ogolnopolski-program-szkolen-piractwo-tv-zakonczone-sukcesem/>.

<sup>1180</sup> *Metodyka pracy policji w ujawnianiu i zwalczaniu piractwa intelektualnego w sieci – dokument Grupy Internet*, w: *Przestępczość teleinformatyczna. X Seminarium Naukowe*, red. J. Kosiński, Szczytno <http://serwisy.gazetaprawna.pl/prawo-autorskie/artykuly/1318435.lukasz-sternowski-o-metodach-walki-z-piractwem-internetowym.html>.

<sup>1181</sup> <https://sygnał.org.pl/0>.



## 6.22.7. Annex

**Table 143. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive 98/84/EC</b>	Act of July 5 2002 on the legal protection of services based on or consisting of, conditional access O.J. 2015 r. poz. 1341, consolidated texts
<b>Article 5 Conditional Access Directive 98/84/EC – Infringing activities</b>	Article 6
<b>InfoSoc Directive 2001/29/EC</b>	Polish Copyright Act
<b>Article 6 InfoSoc – Obligations as to technological measures</b>	Article 79 (6)
<b>Article 8 InfoSoc paragraphs 1 and 2 – Sanctions and remedies</b>	Article 79 (7)
<b>Article 8 paragraph 3 InfoSoc – Sanctions and remedies</b>	Not transposed in a specific provision of the Polish Copyright Act
<b>IPRED 2004/48/EC</b>	Code of Civil procedure and Polish Copyright Act
<b>Article 6 IPRED – Evidence and Article 7 IPRED – Measures for preserving evidence</b>	Articles 479 <sup>106</sup> - 479 <sup>111</sup> (disclosure or surrender means of evidence) of the Code of Civil Procedure; and Article 479 <sup>96</sup> - 479 <sup>105</sup> (securing a means of evidence) of the Code of Civil Procedure
<b>Article 8 IPRED – Right of information</b>	Articles 479 <sup>112</sup> - 479 <sup>121</sup> (claim for information) of the Polish Code of Civil Procedure
<b>Article 9 IPRED – Provisional and precautionary measures</b>	Articles 479 <sup>96</sup> - 479 <sup>121</sup> of the Polish Code of Civil Procedure
<b>Article 10 IPRED – Corrective measures</b>	Article 79 (4) of the Polish Copyright Act
<b>Article 11 IPRED – Injunctions</b>	Article 79 (3) of the Polish Copyright Act
<b>Article 12 IPRED – Alternative measures</b>	Article 79 (1) (3) of the Polish Copyright Act
<b>Article 13 IPRED - Damages</b>	Article 79 (1) (4) of the Polish Copyright Act
<b>E-Commerce Directive 2000/31/EC</b>	Act of 18 July 2002 on rendering services by electronic means, O.J. .2020.344, consolidated text of 3 March 2020; Regulation of the Ministry of Economy of August 17 2010 on the establishment of a contact point for administration and a contact point for service providers and service recipients (O.J. 2010 No. 171 section 1152), issued on the basis of Article 3d of



EU directives	National law
	the Act of 18 July 2020 on rendering services by electronic means (implementation of Article 19 (3) and (5) of the E-Commerce Directive)
<b>Articles 12-15 E-Commerce Directive – Liability of intermediary service providers</b>	Articles 12-15 of the Act of 18 July 2002, on rendering services by electronic means, O.J. .2020.344, consolidated text of 3 March 2020
<b>Article 17 E-Commerce Directive – Out-of-court dispute settlement</b>	Availability of alternative dispute resolution in Poland <sup>1182</sup>
<b>Art 20 E-Commerce Directive – Sanctions</b>	N/A
<b>DSM Directive EU 2019/790</b>	Not transposed (as at October 2021)

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<sup>1182</sup> <https://sadarbitrazowyonline.pl/pl/about-the-court>.

## 6.23.PT – Portugal – National legal summary<sup>1183</sup>

### 6.23.1. General legal framework

#### 6.23.1.1. National legislation on copyright<sup>1184</sup>

In Portugal, several acts regulate the scope and the enforcement of copyright and related rights, as follows:

- Copyright and Related Rights Code – Decree-Law No. 63/85 of 14 March 1985 (*Código do Direito de Autor e dos Direitos Conexos* – Copyright and Related Rights Code)<sup>1185</sup>
- Rental and Lending Rights Law – Decree-Law No. 332/1997 of 27 November 1997 (*Lei do Direito de Aluguer e de Comodato*),<sup>1186</sup> transposing Council Directive 92/100/EEC on rental and lending rights into the Portuguese legal system
- Legal regime for Collective Management Organisations – Law No. 26/2015 of 14 April 2015 (*Regime jurídico das entidades de gestão coletiva do direito de autor e dos direitos conexos*),<sup>1187</sup> transposing Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market
- Fair Compensation for Private Copying – Law No. 62/98 of 1 September 1998 (*Compensação equitativa relativa à cópia privada*), which regulates the scheme of fair compensation for acts of reproduction made for private purposes<sup>1188</sup>
- Satellite Broadcasting and Cable Retransmission – Decree-Law No. 333/97 of 27 November 1997 (*Rádiodifusão por Satélite e Retransmissão por Cabo*),<sup>1189</sup> transposing Council Directive 93/83/EEC on satellite and cable retransmission into the Portuguese legal system

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<sup>1183</sup> It was not possible to receive feedback on the country report concerning Portugal during the checking round with the national competent institutions.

<sup>1184</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>1185</sup> [http://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=484&tabela=leis&so\\_miolo=](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=484&tabela=leis&so_miolo=)

<sup>1186</sup> [http://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=502&tabela=leis&so\\_miolo=S](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=502&tabela=leis&so_miolo=S)

<sup>1187</sup>

[https://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=2323&tabela=leis&ficha=1&pagina=1&so\\_miolo=](https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=2323&tabela=leis&ficha=1&pagina=1&so_miolo=)

<sup>1188</sup>

[https://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=1401&tabela=leis&so\\_miolo=](https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1401&tabela=leis&so_miolo=)

<sup>1189</sup> [http://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=1523&tabela=leis](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1523&tabela=leis)



- Phonogram Authentication – Decree-Law No. 227/89 of 8 July 1989 (*Autenticação de Fonogramas*)<sup>1190</sup>
- Legal protection of computer programmes – Decree-Law No. 252/94 of 20 October 1994 (*Protecção Jurídica dos Programas de Computador*),<sup>1191</sup> transposing Council Directive 91/250/EEC on the legal protection of computer programmes into the Portuguese legal system
- Legal Protection of Databases – Decree-Law No. 122/2000 of 4 July 2000 (*Protecção Jurídica das Bases de Dados*),<sup>1192</sup> transposing Directive 96/9/EC on the legal protection of databases into the Portuguese legal system.

In Portugal, copyright infringement is considered both a criminal offence and a civil law violation. The two most important criminal offences are those defined in Article 195 regarding usurpation (*usurpação*) and Article 196 on counterfeiting (*contrafação*) of the Copyright and Related Rights Code. Additionally, Articles 198 and 199 provide for the crime of “violation of moral right” (*violação de direito moral*) and crimes related to the “exploitation of counterfeited or usurped works” (*aproveitamento de obra contrafeita ou usurpada*).

It is worth mentioning that, prior to the last amendment to the Copyright and Related Rights Code – introduced by Law 92/2019 of 4 September 2019<sup>1193</sup> –, the communication to the public of commercially edited phonograms and videograms was punishable as a crime under Article 195. After this amendment, however, this behaviour was explicitly excluded from the crime of *usurpação* under Article 195(4). The communication to the public of commercially edited phonograms and videograms is now considered an administrative offence, pursuant to Article 205(3), (4) and (6) to (12) of the Copyright and Related Rights Code.

Under the provisions defining crimes of usurpation (Article 195) and counterfeiting (Article 196), there is no distinction as to whether the infringer is acting for profit or not. Article 195 even states that a crime is committed by

*whoever misrepresents or publishes a work not yet disclosed or published by its author, or not intended for disclosure or publication, even if he presents it as the author's, whether or not he intends to obtain any economic advantage.*

Yet, Article 199, which provides for the crime of use of counterfeited or usurped works, implies that such use must have a profit-making intent. The provisions state that

*Anyone who sells, offers for sale, imports, exports or in any way distributes to the public a work that has been usurped or counterfeited or an unauthorised copy of a phonogram or*

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<sup>1190</sup> [https://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=1524&tabela=leis&so\\_miolo=](https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1524&tabela=leis&so_miolo=)

<sup>1191</sup> [http://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=152&tabela=leis&so\\_miolo=](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=152&tabela=leis&so_miolo=)

<sup>1192</sup> [https://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=155&tabela=leis&so\\_miolo=](https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=155&tabela=leis&so_miolo=)

<sup>1193</sup> [http://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=3173&tabela=leis&ficha=1&pagina=1&so\\_miolo=](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=3173&tabela=leis&ficha=1&pagina=1&so_miolo=)

*videogram, whether the respective copies have been produced in the country or abroad, shall be punished with the penalties provided for in Article 197.*

Moreover, as explicitly foreseen in Article 211 of the Copyright and Related Rights Code (as in Article 13 of the IPRED), the profit attained by the infringer is a relevant criterion to determine the amount of damages in cases of civil liability.

It should also be noted that, at the time of writing, a new bill intended to establish an administrative procedure to be adopted in the event of the unlawful making available to the public of content protected by copyright or related rights was under discussion in the Portuguese Parliament (Draft Law No. 706/XIV). The bill is clearly inspired by the antipiracy Memorandums of Understanding (MoUs) described below. Under the proposed text, whenever the General Inspectorate of Cultural Activities (IGAC), following a complaint, detects a website or internet service that makes available content protected by copyright or related rights, without the authorisation of the legitimate rightsholders, it shall notify the infringer to put an end to said activity and remove the service or content from the internet within 48 hours. If that period of time elapses and the infringement is not terminated, the IGAC shall notify the relevant intermediary network service providers, who will then have to remove or disable access to the content within a maximum period of 48 hours from notification. When the 48-hour time limit substantially reduces the usefulness of the removal or blocking decision, namely due to the fact that the availability of the content occurs in real time and for a limited period of time (e.g. live sports events), intermediary service providers shall adopt the necessary measures as soon as possible.

### 6.23.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>1194</sup> has not been transposed (as at May 2021).

**Table 144. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	Not transposed yet
<b>Intellectual Property Rights Enforcement</b>	Copyright and Related Rights Code, as amended by Law No. 16/2008 of 1 April 2008

<sup>1194</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.



EU directive	National law
<b>Directive (IPRED)</b>	
<b>Information Society (InfoSoc) Directive</b>	Copyright and Related Rights Code, as amended by Law No. 50/2004 of 24 August 2004
<b>E-Commerce Directive</b>	Decree-Law No. 7/2004 of 7 January 2004 – Electronic Commerce in the Internal Market and Processing of Personal Data ( <i>Comércio Electrónico no Mercado Interno e Tratamento de Dados Pessoais</i> ) <sup>1195</sup>
<b>Conditional Access Directive</b>	Decree-Law No. 287/2001 of 8 November 2001 <sup>1196</sup> Law No. 5/2004 of 10 February 2004 – Electronic Communications Act ( <i>Lei das Comunicações Eletrónicas</i> ) <sup>1197</sup>

Source: Portuguese response to European Audiovisual Observatory standardised survey

## 6.23.2. National rules applicable to audiovisual sports content

### 6.23.2.1. Legal definitions of “broadcaster” and “sports event organiser”

In Portuguese law, the definition of “broadcaster” is provided by Article 176(9) of the Copyright and Related Rights Code, as an entity that carries out radio or visual broadcasting. Radio or visual broadcasting means the diffusion of sounds or images, or their representation, separately or cumulatively, by wire or wireless means, namely by airwaves, optical fibres, cable or satellite, intended for reception by the public. Moreover, a definition of “television operator” is provided by Law No. 27/2007 of 30 July 2007 as a legal person who is legally qualified to exercise the television activity and who is responsible for the organisation of television programme services.

There is no official definition of “sports event organiser” in Portuguese law, but Law No. 39/2009, which establishes the legal framework for combating violence, racism, xenophobia and intolerance in sports events, provides two definitions that may be relevant to define sports event organisers:

- “Organiser of sports competitions”: the federation of the respective sport with reference to non-professional or international competitions held under the aegis of international federations, professional leagues of clubs, as well as associations of territorial scope, in respect of the corresponding competitions;

<sup>1195</sup> Decree-Law No. 7/2004 of 7 January 2004 - Electronic Commerce in the Internal Market and Processing of Personal Data (*Comércio Electrónico no Mercado Interno e Tratamento de Dados Pessoais*), [https://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=1399&tabela=leis&so\\_miolo=](https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1399&tabela=leis&so_miolo=)

<sup>1196</sup> <https://dre.pt/web/guest/pesquisa/-/search/595558/details/>.

<sup>1197</sup> [http://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?artigo\\_id=1439A0048&nid=1439&tabela=leis&pagina=1&ficha=1&nversao=](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?artigo_id=1439A0048&nid=1439&tabela=leis&pagina=1&ficha=1&nversao=)



- “Promoter of sports events”: the association of territorial scope, clubs and sports societies, as well as the federations and leagues themselves, when they are simultaneously organisers of sports competitions.

#### 6.23.2.2. Legal protection related to sports events

Sports events as such do not enjoy legal protection on the basis of copyright law (as confirmed by the Court of Justice of the European Union (CJEU) in the *Football Association Premier League*<sup>1198</sup> case. But, while there is no specific legal protection for organisers of sports events in Portugal, some academics and courts argue in favour of the existence of a “show right” (*direito ao espectáculo*)<sup>1199</sup> – a right whose source lies in customary law and, to some extent, in the Copyright and Related Rights Code and in the 1990 Framework Law of the Sports System (Law 1/90, of 13 January).

Article 117 of the Copyright and Related Rights Code provides that the organiser of a show in which a work is performed has the right to authorise any broadcasting, recording or reproduction of the performed work. It has been argued in academic circles that this provision reflects a right with customary origins, which is generally granted to the organisers of shows as a reward for their investment and the risks they incur. These academics further claim that, from an economic perspective, no distinction should be made between the organisation of a concert and that of a sports event, given that the type of risk and investment are similar.

This right is therefore conferred on the organiser of the event and has as its general basis the need to protect the business performance of immaterial nature that the show represents, ensuring to those who organise it compensation for their investment and the corresponding sustainability of the activity. In addition, the former 1990 Framework Law of the Sports System recognised the “*direito ao espectáculo*” in its Article 19(2):

*The right of access to sports venues of media professionals in the exercise of their profession, without prejudice to the conditions and limits to this right, namely for the protection of the right to the show, or other legitimate rights and interests of clubs, federations or organisers of sports events, in terms of the regulations.*

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<sup>1198</sup> Court of Justice of the European Union (CJEU), 4 October 2011, *Football Association Premier League Ltd v. Others*, C-429/08.

<sup>1199</sup> See José de Oliveira Ascensão (1987), “O Direito ao Espectáculo”, *Boletim do Ministério da Justiça* No. 366, pp. 41-55; *idem* (1988), “Direito à Informação e Direito ao Espectáculo”, *Revista da Ordem dos Advogados*, pp. 17-35; and *idem* (2002), “Titularidade de Licença de Emissor de Televisão e Direito ao Espectáculo no Rescaldo do Litígio S.L Benfica/Olivedesportos”, in AAVV., *Estudos em Homenagem à Professora Doutora Isabel de Magalhães Collaço*, vol. II, Almedina, pp. 295-312. See also Alberto de Sá e Mello (2012), “Filmagem de Espectáculos Desportivos e ‘Direito de Arena’”, *Jurismat* No. 1, pp. 175-199.



The existence of the right has been challenged, following the approval of the 2007 reform of the Regulation of Physical Activities and Sports,<sup>1200</sup> which removed any explicit reference to the right in the field of sports. However, some academics claim that the right still survives in what is now Article 49(2), which grants to the owner of the show the right to limit access to shows for which a fee is required.<sup>1201</sup>

On the other hand, the producer of the audiovisual recording of the event holds related rights in the first fixation of the film, which give him/her specific exclusive rights, such as the right to authorise the reproduction of such recording, its rental or lending, as well as its distribution, including the right to authorise its communication to the public. Furthermore, if the recording of the event is broadcast, such broadcast can be protected by the related rights of the broadcaster, regardless of the content that is transmitted (i.e. even if the content of the signal is not subject to copyright protection itself, as is the case with sports events). Broadcasting organisations enjoy protection over the transmission of their broadcast signals, namely the exclusive right to prohibit the fixation, the reproduction of the fixation, the rebroadcasting and the communication to the public of television broadcasts. Any unauthorised use of a sports broadcast on the internet is therefore an infringement of the related right of the broadcaster over the broadcast.

Regarding enforcement measures, there are no significant differences between copyright and related rights, meaning that the measures described above are generally available to address online piracy of sports broadcasts (including criminal law protection, through the application of Article 195, which establishes the crime of *usurpação*).

Regarding the entitlement to take legal action, the entity that holds the transmission rights at the moment of the infringement is the aggrieved party, being henceforth entitled to take legal action. This entity is normally the broadcaster.

### 6.23.2.3. Other specific rules applicable to sports events

No other specific rules apply in relation to the legal protection of sports events organisers in Portugal. There are no rules either concerning the use of sports content in social media.

**Table 145. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
Broadcaster	Yes	Related rights

<sup>1200</sup> Regulation of Physical Activities and Sports (Law No. 5/2007, *Lei de Bases da Actividade Física e do Desporto*), <https://dre.pt/pesquisa/-/search/522787/details/maximized>.

<sup>1201</sup> Article 49(2) provides that the entry into sports venues by holders of the rights to free transit, during the period in which a sports show with paid admission is taking place, is only allowed provided that they are in effective exercise of functions and such access is essential for the full performance of the same, under the law.





Sports event organiser	Yes	“Show right”
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Source: Portuguese response to European Audiovisual Observatory standardised survey

### 6.23.3. Remedies and sanctions applicable in the event of infringement

#### 6.23.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

Besides criminal and civil liability (discussed above), the Copyright and Related Rights Code provides a series of sanctions, remedies and injunctions to remedy infringements of the rights set out in the InfoSoc Directive, most of which arise from the implementation of the IPRED.

Importantly, the code allows the rightsholder to seek interlocutory injunctions (*providências cautelares*) which follow a specific regime set out in Article 210-G (different from the normal civil procedure rules). These injunctions can be sought whenever there is an infringement or a well-founded concern that another person may cause harm that is deemed serious and difficult to repair. In such cases, the deciding court may, at the request of the applicant, order appropriate measures to prevent any imminent infringement or to prohibit the continuation thereof.

In addition, the code also provides a series of measures for obtaining and preserving evidence and the obligation to provide information, (Articles 210-A to 210-F), injunctions and corrective measures and damages (Articles 210-I and 210-J).

All these measures can be applied and are available in cases of online piracy of sports content that include the broadcasts, protected by a specific related right. In cases concerning online piracy of audiovisual sports content, Article 210-G (interlocutory injunctions) may be particularly useful in that it allows for a relatively prompt reaction against the infringements.

Concerning the protection of technological measures and rights management information (Articles 6-7 of the InfoSoc Directive),<sup>1202</sup> Article 104(1) of Law 5/2004 of 10 February 2004 (Electronic Communications Act – *Lei das Comunicações Eletrónicas*) prohibits the following activities: (a) the manufacture, import, distribution, sale, rental or

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<sup>1202</sup> These provisions have been transposed into the Portuguese legal system through Law 50/2004 of 24 August. This law introduced the fifth amendment to the Copyright and Related Rights Code, adding a new section on the protection of technological measures and rights-management information (Articles 217-228).

possession for commercial purposes of unlawful devices; (b) the installation, maintenance or replacement for commercial purposes of an unlawful device; (c) the use of commercial communications to promote unlawful devices; (d) the acquisition, use, ownership or mere possession, in any capacity, of unlawful devices for the private purposes of the acquirer, user, owner or holder, as well as a third party. The actions under (a) constitute a crime punishable by imprisonment for a term of up to three years or by a fine, according to Article 104(3). The actions under paragraphs (b) and (c) constitute serious administrative offences punishable by a fine varying from EUR 250 to EUR 1 000 000, under Article 113(3)(zz). In addition, Article 114 provides that the state may seize any unlawful devices and equipment.

According to Article 104(2), an unlawful device can be considered any equipment or software designed or adapted to enable access to a protected service, without the authorisation of the service provider. Hence, in a case where a person uses this kind of unlawful device for private purposes, Article 104(1)(d) can be invoked. On the other hand, the developer or distributor of such devices may be punished under Article 104(1)(a). The criminal prohibition may therefore apply to, *inter alia*, the distribution and possession of Kodi boxes<sup>1203</sup> used for accessing audiovisual sports content.

#### 6.23.3.2. National bodies with competences on copyright enforcement

In Portugal, under Article 206 of the Copyright and Related Rights Code, the General Inspectorate of Cultural Activities (IGAC)<sup>1204</sup> is responsible for processing administrative offences and the general inspector of the IGAC is responsible for imposing fines. In addition, Article 201 of the code provides that copies of usurped or counterfeited works are always apprehended, as well as instruments and equipment related to the infringement. In the case of *flagrante delicto*, the IGAC, the Food and Economic Security Authority (ASAE) and other police and administrative authorities are empowered to apprehend the infringer. In addition, the authorities identified in Article 201 may apprehend instruments used in connection with online piracy of sports content (e.g. Kodi boxes).

Among its missions, the IGAC is in charge of ensuring the technical, financial and management audit of the services and bodies dependent on or under the supervision and oversight of the government minister responsible for the area of culture (where sport is included); ensuring the activity of supervision, inspection and monitoring in the area of copyright, related rights and artistic performances, which includes the competence to validate the application of injunctions (see the description of notice and take-down procedures below), and to process administrative offences and impose fines; collaborating

<sup>1203</sup> A Kodi box is a kind of streaming device also known as a “streaming box”.

<sup>1204</sup> Under Article 2(2)(b) of Regulatory Decree No. 43/2012 of 25 May 2012, the IGAC is competent to supervise, inspect and monitor activities in the area of copyright and related rights. The IGAC is assisted by MAPINET, an association that has been working in the detection of websites where protected works are made available or distributed to the public without the authorisation of the legitimate rightsholders.

with judicial authorities and criminal police authorities; registration and certification activities, as well as promotion and awareness activities.

### 6.23.3.3. Codes of conduct and Memorandums of Understanding

In Portugal, on 30 July 2015, rightsholder representatives, the IGAC, the Portuguese Association of Telecom Operators, the Portuguese Consumer Directorate-General, the organisation responsible for “.pt” domain registrations (DNS.PT), the anti-piracy group MAPINET (Civic Movement for Anti-Piracy on the internet), advertising associations and consumer associations agreed on an MoU facilitating the blocking of copyright-infringing websites.<sup>1205</sup>

Since 2015, different pirate sites have been blocked under this MoU. The agreement provides the following procedure in order to facilitate the blocking of copyright-infringing websites: (i) the signatory rightsholder representatives notify MAPINET of websites that contain either a minimum of 500 works which allegedly infringe copyright or related rights, or sites that contain two thirds of allegedly infringing content; (ii) MAPINET is responsible for collecting the evidence submitted by the representatives of the rightsholders and transmitting wide-ranging complaints to the IGAC at fixed times each month (at the beginning and 15th of the month); each complaint by MAPINET includes various notifications of pirate sites made by rightsholders’ representatives; (iii) within 15 working days from receiving the complaints, the IGAC contacts Internet Service Providers (ISPs) to restrict access to the websites through DNS blocking. These blocks expire after a year, unless the IGAC determines otherwise. Additionally, the IGAC simultaneously informs the associations representing advertisers so that their members can ensure that advertising is not included on the websites in question..

Notwithstanding the thousands of websites that have been blocked as a result of this MoU, a new agreement was deemed necessary in order to tackle the piracy of live events. A new MoU was therefore signed in December 2018 by the IGAC, the association representing telecom operators and associations representing producers, resellers and video authors,<sup>1206</sup> to facilitate the temporary blocking of illegal transmissions of sports events on the internet, especially of football matches (dynamic injunctions).

During the first stage, the entities representing rightsholders, assisted by technological partners, become aware of internet sites that are making available, in an unauthorised manner and through live streaming, the television signal of the broadcasting organisations. They must then immediately submit a complaint to the IGAC, with the knowledge of MAPINET, containing evidence regarding the ownership of the

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<sup>1205</sup>[http://www.apel.pt/gest\\_cnt\\_upload/editor/File/apel/direitos\\_autor/memorando\\_APRITEL\\_IGAG\\_MAPINET.pdf](http://www.apel.pt/gest_cnt_upload/editor/File/apel/direitos_autor/memorando_APRITEL_IGAG_MAPINET.pdf).

<sup>1206</sup><https://www.direitosdigitais.pt/media/ficheiros/memorando2.pdf>.



allegedly infringed content and indicating the exact location where the broadcaster's television signal is being unlawfully made available, the name of the site, page, or blog, domain name and subdomain, and Internet Protocol (IP) address, together with the date and time at which the use was detected. Hyperlinks, screen prints, and any other element capable of identifying the broadcaster's signal and the website where it is unlawfully available should also be provided. Finally, the holder of the respective rights and, where applicable, the collective management organisation representing it must be identified.

After the double sifting, with MAPINET's validation and the IGAC's confirmation, and emphasising that live sports events, by their very nature and under penalty of uselessness, require faster action by the entities involved in the course of unauthorised transmissions, the IGAC notifies the ISPs of the need to block access to the websites identified in the complaint; this blocking must be carried out in the shortest time possible.<sup>1207</sup>

Since the new MoU came into force in January 2019, 12 736 illegal streams of national football championship matches have been identified. All streams have been subject to blocking attempts, and MAPINET and the IGAC highlight a validation and confirmation rate of 92% of the requests. Only 1 016 temporary blockings were refused by these two entities. Under this new MoU, the process of identifying and blocking unauthorised content is carried out in real time.

It is important to note that: (i) each blocking measure is temporary and will have the duration indicated in the notification. In most cases, the blocks end as soon as the official broadcasts of the matches or other events end; (ii) DNS blocking targets only a specific domain or website, preventing access to that domain or website; (iii) the process described is repeated event by event.

As mentioned above, a legislative proposal has recently been tabled, which is clearly inspired by the anti-piracy MoUs.<sup>1208</sup> The bill grants the IGAC the power to notify online intermediaries of the existence of copyright-infringing content. Following notification, intermediaries must carry out the blocking/removal within 48 hours. By emphasising the need for judicial redress and the hearing of interested parties, one of the underlying goals of the bill seems to be to respond to some of the criticisms raised against the MoUs, which have been said to contain insufficient safeguards for users. Thus, for example, the decision of the IGAC is limited in time and any prolongation of the measure shall be examined in court, with the additional possibility to lodge an appeal in

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<sup>1207</sup> According to the information gathered, MAPINET and the IGAC take, on average, 2.5 minutes each to validate and confirm, or not, temporary blocking requests. The data collected so far and the experience with the most recent MoU suggest that the process of identification and blocking of unauthorised content in real time takes approximately 25 minutes in total: 5 minutes for the submission made by the entities representing rightsholders; 5 minutes for the validation mentioned above; and 15 minutes for the blocking by the ISPs.

<sup>1208</sup> Bill 706/XIV/2 delimits the circumstances under which access to protected content in the digital environment must be removed or made impossible, as well as the procedures and means for achieving that result (*Projeto de Lei 706/XIV/2, Delimita as circunstâncias em que deve ser removido ou impossibilitado o acesso em ambiente digital a conteúdos protegidos, bem como os procedimentos e meios para alcançar tal resultado*): <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=110386>

court. At the time of writing, the bill is still under discussion in the parliamentary chambers.

#### 6.23.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

Under Article 16 of Decree-Law No. 7/2014,<sup>1209</sup> hosting providers shall only be held liable for the information they store if they have knowledge of an activity or information whose unlawfulness is manifest and do not immediately remove or disable access to that information (paragraph 1). It is further stated that a hosting provider shall incur civil liability whenever, considering the circumstances of which it has knowledge, the provider is or should be aware of the unlawful character of the information (paragraph 2). It is to be noted that hosting providers will not benefit from any exemption where the user that has uploaded the infringing content acted under the direction or control of the provider (paragraph 3), for in that case the latter will not have acted as a neutral intermediary.

Hosting providers may therefore be found liable for failure to comply with a duty to act provided in Article 16(1) and (2). Hosting providers will be held liable only if, having received due notice that they are storing manifestly unlawful content, they fail to expeditiously remove or disable access to such content. If a hosting provider is notified of content that it stores and which is evidently unlawful, it will be under a legal duty to act and to expeditiously remove that content if it wants to remain exempt from liability. Otherwise, such failure to comply will constitute grounds for liability.

There is no specific notice and take-down procedure in Portuguese law transposing the E-Commerce Directive.<sup>1210</sup> Nonetheless, academics have been arguing that only a reasonable and serious notification will impose on the provider a legal duty to act. In order to fulfil such conditions, the notification must provide sufficient grounds for the provider to assess the truthfulness of the report, as well as sufficient details on the location of the allegedly unlawful content. This could be done by including, at least, (a) the complete identification of the complainant and the identification of the person who makes the complaint on his/her behalf, if applicable; (b) the identification of the unlawful content and the URL where it is located; and (c) a brief description of the right which is being affected by such content, along with circumstantial evidence that such right belongs to the complainant.

In addition, under Article 16 of Decree-Law No. 7/2014, for the hosting provider to be under a duty to act, the unlawfulness of the content must be manifest. Whereas there is unlikely to be any doubt that content related to child sexual abuse or terrorism is

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<sup>1209</sup> Decree-Law No. 7/2014 of 15 January: <https://dre.pt/application/conteudo/570993>

<sup>1210</sup> For self-regulatory agreements (MoU), please see section 6.23.3.3 of this country report.



unlawful, it may be harder to determine whether a certain piece of content constitutes copyright infringement, invasion of privacy or defamation. In some (perhaps most) cases of online piracy of sports events, however, unlawfulness will be evident.

#### 6.23.3.5. Removal and blocking orders

Blocking injunction procedures are governed by Article 210-G of the Copyright and Related Rights Code. According to this provision, where there is an infringement or a reasonable fear that another person will cause serious and not easily reparable damages to copyright and related rights, a court may, at the request of the claimant (the rightsholder or his/her representative), order appropriate measures to inhibit any imminent infringement or prohibit the continuation thereof. It should be noted that the use of the word “or” (infringement *or* reasonable fear of infringement) implies that it is sufficient to demonstrate the violation of the right. In such case, the demonstration of the seriousness of the harm and the difficulty of redress (commonly known as the “*periculum in mora*” requirement) is removed. In order to succeed in case of actual infringement, the claimant must provide evidence: (i) that he/she is the holder of copyright or related rights, or that he/she is entitled to exercise them, and (ii) that the infringement is taking place.

The measures may also be imposed on any intermediary whose services are being used by a third party to infringe copyright or related rights. The court will consider whether the blocking of domains, subdomains or IP addresses is an appropriate, balanced, or proportional measure to defend the rights in question, or even whether it is effective. The court may, of its own motion or at the request of the applicant, order a periodic penalty payment to ensure that the measures referred to are carried out. At the request of the defendant, the measures may, within ten days, be replaced by a deposit, provided that the latter is able to guarantee compensation to the rightsholder, who must be heard in this regard. When determining the measures, the court shall take into account the nature of the copyright or related rights, safeguarding in particular the possibility for the holder to continue to exploit his/her rights without any restriction.

Moreover, a general regime for interim dispute resolution is provided in Decree-Law No. 7/2004 of 7 January 2004. According to Article 18 of this Decree-Law a regime of provisional dispute resolution is established concerning infringing content made available via hosting providers and/or search engines. The purpose of this regime is to provide an administrative entity with the competence to decide provisionally if certain content should be removed or if access to specific information should be blocked. The aim is therefore to obtain the rapid resolution of issues where the slow adoption of measures may have harmful consequences that are difficult to stop, particularly for those who are harmed by the maintenance of illegal content on the network.

Under this provision, if the unlawfulness is not manifest, hosting providers and search engines are not obliged to remove or disable the disputed content just because an interested party claims that there is an infringement. In such cases, the interested party may appeal to the National Telecommunications Authority (ANACOM), which will render a provisional decision within 48 hours and immediately communicate it to the intervening



parties by electronic means. It is also provided that anyone with a legal interest in maintaining that content online may, under the same terms, resort to ANACOM to obtain an interim solution to the emerging dispute. However, the service provider is not obliged to inform the owner of the site of its decision and the reasons for it. Whatever the decision, no responsibility will fall on ANACOM, nor on the intermediary for having or not removed or disabled the content, as long as it is not manifestly illegal. The final settlement of the dispute shall be carried out under the terms and by the common means (i.e. by the courts).

#### 6.23.3.6. Measures against end-users

If plaintiffs want to identify the end-users they must ask the court to compel private entities, such as ISPs, to share such information under Article 210-A of the Copyright and Related Rights Code. This is done on a case-by-case basis.

#### 6.23.3.7. Criminal sanctions

In Portugal, the crime of usurpation (*usurpação*) of a work protected by copyright is regulated by Article 195 of the Copyright and Related Rights Code. According to this article, the crime of usurpation is committed by anyone who, without the authorisation of the author or artist, phonogram and videogram producer or broadcaster, uses a work or performance in any of the ways provided for in this Code. The crime of usurpation is also committed, by way of example, when there is a disclosure or publication of a work that has not yet been disclosed or published or when there is a collection of works without the author's authorisation, etc. The penalties for these crimes are specified in Article 197 and consist in imprisonment of up to three years and a fine of 150 to 250 days, according to the seriousness of the offence (double in the case of a repeated offence). If the crime is committed through negligence, a fine of 50 to 150 days is provided. In the case of a repeated offence, the penalty will not be suspended.

Article 199 may also apply if there is exploitation (i.e. if the offender takes economic advantage of the usurpation) for anyone who sells, offers for sale, imports, exports or in any way distributes to the public a work that has been usurped or counterfeited or an unauthorised copy of a phonogram or videogram, whether the respective copies have been produced in the country or abroad. These are public crimes, meaning that, according to Article 48 of the Code of Criminal Procedure, the Public Prosecutor's Office has, on its own, the legitimacy to initiate the criminal proceedings and investigate the crime, if it becomes aware of the relevant facts.

The criminal procedure consists in five stages: (i) the investigation (Articles 262-285 of the Code of Criminal Procedure), including the investigation of the crime and the



discovery of evidence, and at the end of the investigation, the Public Prosecutor's Office chooses between closing the case or making an accusation;<sup>1211</sup> (ii) the pre-trial investigation (Articles 286-310 of the Code of Criminal Procedure), aimed at discussing with the judge whether there are grounds for taking the case to trial;<sup>1212</sup> (iii) the trial (Articles 311-380 of the Code of Criminal Procedure), that begins with a preliminary ruling or under the jurisdiction of a court with an order on whether or not to admit the case to the trial phase. Evidence will be produced and assessed during trial hearings, the facts presented will be considered and debated, the legal issue will be discussed and finally a ruling will be rendered. Each party is given the opportunity to intervene during the proceedings, giving his/her reasons and being able to challenge the reasons of the other subjects; (iv) the appeal (Articles 399-466 of the Code of Criminal Procedure): the decision may be subject to a new consideration, this time by a hierarchically superior court; (v) the execution of sentences (Articles 467-512 of the Code of Criminal Procedure): this is intended to enforce judgments that have previously been handed down.

In addition, according to Article 211 of the Copyright and Related Rights Code, anyone who infringes third-party copyright or related rights, intentionally or through negligence, is obliged to compensate the injured party. When determining the amount of damages, both pecuniary and non-pecuniary, the court shall take into account the profit made by the infringer, the loss of profits and emerging damages suffered by the injured party and the costs incurred by the latter in protecting copyright or related rights, as well as the investigation and cessation of conduct harmful to its right. The court must also take into account the non-pecuniary damage caused by the infringer's conduct, as well as the circumstances of the offence, the seriousness of the injury suffered, and the degree of illicit dissemination of the work or performance. According to Article 211, when it is impossible to determine the amount of the damage actually suffered by the injured party, and provided that the injured party does not object, the court may, alternatively, establish a lump sum, based at least on the remuneration that would have been received if the infringer had requested authorisation to use the rights in question and the costs incurred by the infringer in protecting copyright or related rights and in investigating and stopping the conduct harmful to his/her right.

**Table 146. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No, national law applies

<sup>1211</sup> As a rule, the Public Prosecutor's Office is responsible for directing the investigation, but some acts, when related to fundamental rights, must be led or authorised by a judge. The investigation phase is flexible, since the object under investigation can change, such as the defendant.

<sup>1212</sup> This phase is judicial and adversarial because the matter is discussed before the judge. It is an optional phase, which may be requested by the defendant or the assistant, if they disagree with the conclusion reached by the Public Prosecutor in the preceding phase.





Specific features on sports	Description
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial bodies)	Yes
Entitlement to take legal action	Yes (rightsholders, broadcasters)
Codes of conduct	Yes
Specific proceedings	No
Specific remedies	No

Source: Portuguese response to European Audiovisual Observatory standardised survey

**Table 147. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	Yes
Removal and blocking injunctions	Yes
Dynamic and/or live blocking injunctions	Yes (granted in practice by the IGAC)
De-indexing injunctions	Yes
Damages and orders to cease and desist	Yes
Administrative offence and remedies	Yes
Notice and take-down procedures	Yes

Source: Portuguese response to European Audiovisual Observatory standardised survey

#### 6.23.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions in relation to online infringement of audiovisual sports content.



**Table 148. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
Communication to the public	N/A	N/A
Hosting providers' knowledge and awareness of illegal activity	ISPs are not subject to an obligation to monitor the information they transmit and store. ISPs can only be held liable if the applicants ask for the removal of content and if said content's unlawfulness is manifest/evident.	The Portuguese Supreme Court in its judgment of 2 June 2016 The Portuguese Supreme Court in its judgment of 10 December 2020
Notice and take-down	N/A	N/A
Measures against end-users	N/A	N/A
Criminal sanctions	N/A	N/A

Source: Portuguese response to European Audiovisual Observatory standardised survey

#### 6.23.4.1. Communication to the public

No relevant case law was identified in Portugal in relation to the notion of communication to the public in the context of online piracy of audiovisual sports content. Most cases concern the unauthorised communication made in commercial establishments that are open to the public, such as hotels and bars.

#### 6.23.4.2. Online infringement of audiovisual sports content

The main sports broadcaster in Portugal, Sport TV, has reportedly been active in seeking interim injunctions for blocking and de-indexing pirate websites. While the decisions rendered by the specialised first instance Intellectual Property Court (*Tribunal da Propriedade Intelectual*) are not publicly available, news outlets have reported that Sport TV has succeeded in obtaining injunctions against a number of websites that unlawfully made available its sports broadcasts, also ordering search engine operators to de-index those websites from their search results.<sup>1213</sup>

#### 6.23.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

<sup>1213</sup> See, e.g., <https://tvi24.iol.pt/tecnologia/internet/tribunal-proibe-sites-de-emitir-sport-tv>.

According to Portuguese law, hosting providers may only be held liable for failure to comply with a duty to act provided in Article 16(1) and (2) of Decree-Law No. 7/2004 if, having received due notice that they are storing manifestly unlawful content, they fail to expeditiously remove or disable access to such content. Otherwise, this failure to comply will constitute grounds for liability. As mentioned earlier (see section 6.23.3.4.), academics have been arguing that only a reasonable and serious notification will impose on the provider a legal duty to act.

There is scarce case law related to the liability exemption regime in Portugal. However, it is worth reporting a judgment of the Supreme Court of 2 June 2016, whereby the court decided that, according to Decree-Law 7/2004, “intermediary service providers are not subject to an obligation to monitor the information they transmit and store” and that

*the Decree-Law enshrines a specific regime of liability of these providers for the performance of these activities, which is compatible with the general regime of civil liability contained in the [Portuguese] Civil Code.*

Furthermore, it added that ISPs can only be held liable if the applicants ask for the removal of content and if said content’s unlawfulness is manifest/evident (the condition of “manifest unlawfulness” is expressly included in the relevant national law provision, as mentioned above).<sup>1214</sup>

The Portuguese Supreme Court in its judgment of 10 December 2020 followed and quoted the abovementioned judgment. It decided that ISPs are generally exempt from monitoring the content on their platforms. They will only be liable if they fail to remove the content when asked to do so and if the unlawfulness of such content is manifest/evident. Furthermore, the court adds that ISPs can also be held liable if they participated or somehow intervened in the “making” of said content.<sup>1215</sup>

#### 6.23.4.4. Notice and take-down requirements

There is no case law regarding the requirements to be fulfilled for a notification procedure of a copyright infringement of audiovisual sports content in Portugal.

#### 6.23.4.5. Removal and blocking orders

Usually the competent bodies seek measures addressed to ISPs to block the DNS access to the website containing the illegal content, either through the judiciary (see sections

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<sup>1214</sup> The Portuguese Supreme Court in its judgment of 2 June 2016, Case No. 1086/10.5TVPR.T.L1.S1: <https://dre.pt/pesquisa/-/search/90177275/details/maximized>.

<sup>1215</sup> The Portuguese Supreme Court in its judgment of 10 December 2020, Case No. 44/18.6YHLSB.L1.S2.



6.23.3.5. and 6.23.4.2.) or through the mechanism provided in the MoU (see section 6.23.3.3.).

#### 6.23.4.6. Measures against end-users ordered by the courts

Regarding measures applied against end-users, as mentioned earlier, the courts have stated that the plaintiff – interested in identifying the end-users – has to ask to the courts themselves to require private entities to share such information under Article 210-A of the Copyright and Related Rights Code. However, the disclosure of personal data is based on the circumstances of the particular case.

For instance, in a recent judgment of 27 October 2020, the Portuguese Court of Intellectual Property<sup>1216</sup> held that the rightsholder of movies being illegally downloaded could not have access to the data of clients of a Portuguese ISP (a case similar to the one that gave rise to the preliminary reference in C-597/19, *MICM v. Telenet*). The rightsholder had information on the clients' IP addresses and requested further personal data, namely postal addresses and names, in order to seek damages from these clients. The court found, *inter alia*, that the legal protection granted to personal data outweighed the benefits of revealing personal data.

#### 6.23.4.7. Compensation criteria adopted by the courts

There is currently no case law in Portugal regarding the compensation criteria adopted by the courts in cases involving sports events broadcasters.

#### 6.23.4.8. Criminal sanctions ordered by the courts

There is currently no case law in Portugal concerning the application of criminal sanctions by the courts in cases of online piracy of audiovisual sports content.

### 6.23.5. Reports and studies

There are two relevant (non-legal) studies about online piracy of protected content in Portugal:

- “Site blocking efficacy in Portugal – September 2015 to October 2016”, (INCOPRO)<sup>1217</sup> showing that, overall, the blocks have had a positive impact,

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<sup>1216</sup> Case No. 142/20.6YHLSB, *op. cit.* See also section 6.23.3.6.

<sup>1217</sup> INCOPRO, “Site blocking efficacy in Portugal – September 2015 to October 2016”, <https://www.incoproip.com/wp-content/uploads/2020/02/Site-Blocking-and-Piracy-Landscape-in-Portugal-May-2017.pdf>.



reducing the usage in Portugal of the websites targeted by the blocking orders by 69.7%. The key conclusions from this report are the following: (i) site blocking in Portugal has resulted in an overall 69.7% drop in usage to the sites affected by the first eight administrative blocking waves ordered in the country. This is consistent with the usage patterns previously identified in other countries where usage initially decreases by around 70%, gradually decreasing further over time; (ii) evidence suggests that alternative domain sites are being used by unauthorised sites in order to continue providing users with access to infringing content. This trend of usage shifting to alternative sites does not equate to sites maintaining pre-block usage levels however, with most receiving only a fraction of previous traffic levels; (iii) the percentage of traffic to the blocked sites via proxies has increased since November 2015, when the blocking regime began. Usage of proxies has not itself increased in Portugal over this period however, the rise in the percentage of proxy usage is instead due to blocked site usage having decreased over this period;

- “Piracy’s Shadow” (*A Sombra da Pirataria*) (Exame Informática, 1 February 2020):<sup>1218</sup> the article shows that streaming and Internet Protocol Television (IPTV) have become the new main mechanisms used for online piracy over the last two years, with over 150 000 recurrent users causing tens of millions of euros of damages in Portugal.

There are no studies or reports that specifically address the issue of illegal online transmission of sports events.

In terms of technologies and business models used in Portugal for the illegal streaming of sports content, no reliable studies have been identified. However, in general, end-users access illegal streams mainly through URLs, Acestream and IPTV services, details of which are disseminated in piracy forums.

Regarding studies describing the legal offer of online sports content, there is a website that has aggregated legal offers of copyright-protected content. This website was launched under the 2015 MoU<sup>1219</sup> and contains a dynamic list of websites with legal offers of music, films, videogames, books and sports events.

Furthermore, in Portugal, several awareness campaigns have been carried out by both public and private entities. The campaigns are usually broadcast in the breaks of sports and cultural events, in cinemas or at the beginning of the protected works themselves, when stored in physical formats, for instance: “You Wouldn’t Steal a Car”. The campaign called “Piracy. It’s a crime” was created by the Federation Against Copyright Theft and the Motion Picture Association in cooperation with the Intellectual Property

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<sup>1218</sup> “Piracy’s Shadow” (*A Sombra da Pirataria*) (Exame Informática, 1 February 2020), [http://apriteL.org/assets/media/media-s3/original/20200204\\_151340Upl.pdf](http://apriteL.org/assets/media/media-s3/original/20200204_151340Upl.pdf).

<sup>1219</sup> <https://www.ofertaslegais.pt/na/pt/search>.



Office of Singapore in July 2004 and appeared on many commercial DVDs and cinemas worldwide as a clip before the actual film was shown.<sup>1220</sup>

Another awareness campaign was created by SPORT TV, which is the main Portuguese sports broadcaster and the holder of exclusive transmission rights over several sports events/leagues. Being one of the main players affected by piracy, SPORT TV launched a campaign to raise awareness about the dangers of piracy for end-users. The campaign was supported by entities such as the National Centre for Cybersecurity, the IGAC, FEVIP (Federation of Videogram Editors) and GEDIPE (Association for the Collective Management of the Rights of Cinematographic and Audiovisual Producers).<sup>1221</sup>

Furthermore, there are associations of broadcasters and rightsholder who have been working dynamically to address the issue of online piracy of sports content: APRITEL (the association representing telecom operators), FEVIP, GEDIPE, and MAPINET.

## 6.23.6. Data compilation

This country report is based on data compiled by Tito Rendas, Professor of Law at Universidade Católica Portuguesa (Lisbon School of Law) and legal Counsel at CCA Law Firm.

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<sup>1220</sup> <https://www.youtube.com/watch?v=O1AsJB4FzX0>.

<sup>1221</sup> <https://i.redd.it/1or56izphw951.png>.



## 6.23.7. Annex

**Table 149. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive 98/84/EC</b>	Decree-Law No. 287/2001 of 8 November 2001, later replaced by Law No. 5/2004 of 10 February 2004 (Electronic Communications Act/ <i>Lei das Comunicações Eletrónicas</i> )
<b>Article 5 of Conditional Access Directive 98/84/EC – Infringing activities</b>	Article 104(1)(d).
<b>InfoSoc Directive 2001/29/EC</b>	Law No. 50/2004 of 24 August 2004 amending the Copyright and Related Rights Code
<b>Article 6 InfoSoc – Obligations as to technological measures</b>	Articles 210-A to 210-F
<b>Article 8 InfoSoc – Sanctions and remedies</b>	Articles 210-I and 210-J
<b>IPRED 2004/48/EC</b>	Law No. 16/2008 of 1 April 2008 which amended the Copyright and Related Rights Code and the Rental and the Lending Rights Law (Decree-Law No. 332/1997 of 27 November 1997)
<b>Article 6 IPRED – Evidence and Article 7 IPRED – Measures for preserving evidence</b>	Article 210-A (measures to obtain evidence); Article 210-B (measures for preserving evidence)
<b>Article 8 IPRED – Right of information</b>	Article 210-F (obligation to provide information)
<b>Article 9 IPRED – Provisional and precautionary measures</b>	Article 210-G (injunctions)
<b>Article 10 IPRED – Corrective measures</b>	Article 210-I (loss of instruments and goods)
<b>Article 11 IPRED – Injunction</b>	Article 210- J (corrective measures)
<b>Article 12 IPRED – Alternative measures</b>	Article 211 (damages)
<b>Article 13 IPRED – Damages</b>	Article 211 (damages)
<b>E-Commerce Directive 2000/31/EC</b>	Decree-Law No. 7/2004 of 7 January 2004 – Electronic Commerce in the Internal Market and Processing of Personal Data/ <i>Comércio Eletrónico no Mercado Interno e Tratamento de Dados Pessoais</i>
<b>Article 12-15 E-Commerce Directive – Liability of intermediary service providers</b>	Article 16 of the Directive corresponds to Article 42 of Decree-Law No. 7/2004 of 7 January 2004
<b>Article 17 E-Commerce Directive – Out-of-court dispute settlement</b>	Articles 18 (temporary dispute settlement) and 34 (electronic dispute resolution)



EU directives	National law
<b>Art 20 E-Commerce Directive – Sanctions</b>	Articles 37 to 41, which regulate the sanctions and remedies, as well as the competence to apply them.
<b>DSM Directive EU 2019/790</b>	Not transposed as at May 2021



## 6.24.RO – Romania – National legal summary<sup>1222</sup>

### 6.24.1. General legal framework

#### 6.24.1.1. National legislation on copyright<sup>1223</sup>

In Romania, Law No. 8/1996 on Copyright and Related Rights (*Lege privind dreptul de autor si drepturile conexe*) is the general act that regulates the scope and the enforcement of copyright and related rights (hereinafter “Copyright Law”).<sup>1224</sup> Other relevant rules on the scope and the enforcement of copyright and related rights are provided in the Civil Procedure Code and the Criminal Procedure Code.

In Romania, according to the Copyright Law, copyright infringement can be considered a criminal offence, an administrative contravention or a civil law violation.

Romanian law does not differentiate between criminal offences depending on whether the perpetrator is acting for profit. The infringement is considered a criminal offence no matter whether the illegal act is carried out with or without the purpose of obtaining profit. Still, acting for profit can be considered by the courts in establishing the punishment.

According to the Copyright Law, the notion of “commercial purpose” is defined as aiming to obtain, directly or indirectly, an economic or material benefit (Article 193 paragraph 7). The only criminal offence for which the law expressly stipulates a “commercial purpose” is the one provided for in Article 199 paragraph 2 (related to the circumvention of technological measures and rights management information).

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<sup>1222</sup> It was not possible to receive feedback on the country report concerning Romania during the checking round with the national competent institutions.

<sup>1223</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>1224</sup> Law No. 8/1996 / *Lege privind dreptul de autor ,si drepturile conexe*  
<https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/ro/ro007en.pdf>. (updated version in Romanian,  
<http://legislatie.just.ro/Public/DetaliiDocument/7816>).

### 6.24.1.2. Transposition of EU directives

This section aims to highlight the transposition of the main provisions of the EU directives related to the enforcement of copyright infringement and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (DSM Directive) and Directive (EU) 2019/789 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC, have not been transposed to date (as at May 2021). A draft law amending the Law on copyright and related rights – by implementing the two above mentioned directives - was published by the Ministry of Culture for the purposes of discussion and several public consultations were organised regarding the draft amending the law.<sup>1225</sup>

**Table 150. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	N/A
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	Law No. 8/1996 on copyright and related rights <sup>1226</sup> .
<b>InfoSoc Directive</b>	Law No. 8/1996 on copyright and related rights.
<b>E-Commerce Directive</b>	Law No. 365/2002 on the e-commerce and the Methodological Norms from 20 November 2002 for applying the Law No. 365/2002 on the e-commerce approved by the Government Decision No. 1308/2002. <sup>1227</sup>
<b>Conditional Access Directive</b>	Law No. 8/1996 on copyright and related rights; Government Decision No. 7 from January 8, 2004 on the legal protection of the services based on conditional access or consisting of conditional access; Government Decision No. 810 from July 15, 2009 on the conditions relating to conditional access to digital broadcasting services for radio programmes and television.

Source: Romanian response to European Audiovisual Observatory standardised survey

<sup>1225</sup> <http://www.cultura.ro/proiect-de-lege-12> - No English version is available.

<sup>1226</sup> Op. cit.

<sup>1227</sup> Law No. 365/2002 on the e-commerce and the Methodological Norms from 20 November 2002 for applying the Law No. 365/2002 on the e-commerce approved by the Government Decision No. 1308/2002, <https://www.legi-internet.ro/en/romanian-itc-legislation-and-articles/comert-electronic/law-no365-of-7-june-2002-on-electronic-commerce-romania.html>

## 6.24.2. National rules applicable to audiovisual sports content

### 6.24.2.1. Legal definitions of “broadcaster” and “sports event organiser”

Under Romanian law, a definition of “broadcaster” is provided for by Article 1 (13) of the Law No. 504/2002 (hereinafter “Audiovisual Law”), which refers to “an audiovisual media service provider in the field of television and/or broadcasting programming services.”<sup>1228</sup> According to Article 1(14) of the same law, the service provider is any person who constitutes and makes available to the public a programme services offer by retransmission, on the basis of a contractual relationship with broadcasters or other distributors. In addition, a definition of a thematic television or broadcasting service (e.g. sports) is provided for in Article 1(7) of the Audiovisual Law, as a service that broadcasts audiovisual programmes dedicated mainly to a specific field and which is addressing a segment of the public.<sup>1229</sup>

Although Romanian law does not provide for a definition of “sports event broadcast,” it defines the notion of programme - that can be similar to a sports event broadcast - as a set of moving images, with or without sound, which constitute a whole identifiable by title, content, form or author, within a network or a catalogue made by an audiovisual media service provider, having the form and content of television services or being comparable in form and content to them [Article 1(4) of the Audiovisual Law].

“Sports events organisers” are defined in Law No. 4/2008 on preventing and combating violence in competitions and sports games. The law distinguishes between: (i)

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<sup>1228</sup> According to Article 21 of the Copyright Law, “broadcasting” refers to the (i) broadcasting of a work by a radio or television broadcasting organisation, by any means that serve for the wireless transmission of the signals, sounds or images, or of digital representation thereof, including the public communication by satellite, for the purpose of reception by the public; (ii) transmission of a work or its representation thereof, by wire, cable, optic fibre or any other similar procedure, with the exception of the computer networks, for the purpose of reception by the public ([https://www.tobaccocontrol.org/files/live/Romania/Romania%20-%20Law%20No.%20504\\_2002.pdf](https://www.tobaccocontrol.org/files/live/Romania/Romania%20-%20Law%20No.%20504_2002.pdf)). In addition, according to the Audiovisual Content Regulatory Code, “broadcasting” means making audiovisual programmes available to the public in a radio or television service or on-demand media service and the communication, within an audiovisual media service, of signs, signals, texts, sounds, information, messages of any kind. The Code was adopted by the Romanian National Audiovisual Council (CNA), the national media regulatory authority. The provisions of the Code are applicable to programmes broadcast by TV and radio services, as well as to those provided by an on-demand media service, also called video on demand, [https://www.cna.ro/IMG/pdf/Decision\\_220\\_of\\_24\\_February\\_2011\\_on\\_the\\_Code\\_of\\_regulation\\_for\\_the\\_audiovisual\\_content\\_updated\\_in\\_2014.pdf](https://www.cna.ro/IMG/pdf/Decision_220_of_24_February_2011_on_the_Code_of_regulation_for_the_audiovisual_content_updated_in_2014.pdf).

<sup>1229</sup> Article 1 (3) of the Audiovisual Law also defines an “on-demand audiovisual media service”, as a non-linear audiovisual media service in which watching programmes is done at the individual request of the user and at the time chosen by him/her, provided by a media service provider based on a catalogue of selected programmes and made available by the media service provider.



the sports competitions organiser, representing the sports structure, legally constituted and officially recognised, which has the right to organise sports competitions [Article 1 c)]; and (ii) the sports games organiser, representing the sports structure, legally constituted and officially recognised, which organises the sports games held either within an official sports competition, or separately, within friendly sports competitions [Article 1 d)].

#### 6.24.2.2. Legal protection related to sports events

Sports events, as such, are not considered as “works”<sup>1230</sup> and are therefore not protected under Romanian copyright law, nor are audiovisual recordings of such events.<sup>1231</sup> However, audiovisual recordings are protected as the subject of related rights of the producer of the recording. Furthermore, when such events are broadcasted, they may benefit from the (in)direct protection of the broadcasters as related rightsholders for their own shows and programming services.

Regarding sports events organisers, under Article 45(1) c) of Law No. 69/2000 on physical education and sports, the sports structures (e.g. sports’ organisers, national sports federations etc.) and the Romanian Olympic and Sports Committee have the exclusivity of the rights of advertising, publicity and radio and television transmission of the competitions they organise or in which they participate, as the case may be. These rights – that are not copyright or related rights covered by the Copyright Law - may be assigned by contract to external parties.

In practice, sports structures (such as sports’ organisers, national sports federations, sports association with legal personality etc.) assign their rights to radio and/or television broadcasters in order to transmit the competitions they organise or in which they participate. Consequently, broadcasters (radio and/or television) hold the rights for the broadcast and usually also the rights to the audiovisual recording of the

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<sup>1230</sup> See CJEU Cases C-403/08 and C-429/08: *paragraph 96: FAPL cannot claim copyright in the Premier League matches themselves, as they cannot be classified as works. paragraph 97: To be so classified, the subject-matter concerned would have to be original in the sense that it is its author’s own intellectual creation (see, to this effect, Case C 5/08 Infopaq International [2009] ECR I 6569, paragraph 37). paragraph 98: However, sporting events cannot be regarded as intellectual creations classifiable as works within the meaning of the Copyright Directive. That applies in particular to football matches, which are subject to rules of the game, leaving no room for creative freedom for the purposes of copyright. paragraph 99: Accordingly, those events cannot be protected under copyright. It is, moreover, undisputed that European Union law does not protect them on any other basis in the field of intellectual property.*

*paragraph 100: None the less, sporting events, as such, have a unique and, to that extent, original character which can transform them into subject-matter that is worthy of protection comparable to the protection of works, and that protection can be granted, where appropriate, by the various domestic legal orders.’*

<sup>1231</sup> Romanian case law has established that sports events can be the subject of an audiovisual recording, defined in Article 106 of the Copyright Law as “any fixation of an audiovisual work or of sequences of moving images, whether or not accompanied by sound, whatever the method and medium used for such fixation” and which is protected by an intellectual property right, recognised as such in the law on copyright and related rights. See further details in section 6.24.4.1. of this country report.

sports event. By contract, the sports events organisers may decide to assign to broadcasters the right to broadcast the competition only and, depending on the decisions of the parties, the sports structures may obtain, by copyright assignment from the broadcaster, the rights to the audiovisual recording of the competition which they organise.

The Audiovisual Law provides for a definition of the exclusive rights held by the broadcaster, i.e., the rights obtained by a broadcaster by virtue of a contract, along with the organiser of an event and/or the owner, where applicable, the manager of the venue where the event takes place, the authors and other rightsholders concerned, for exclusive televised broadcast by that broadcaster over a specified geographical area [Article 1(28)].

In the case of football, the rights to the broadcasts of sports events are held by the Football Professional League; in the case of the Olympic Games, the rights are held by the International Olympic Committee; and, in the case of other sports, the rights are held by various federations. The same principles mentioned above regarding the assignment of rights to a broadcaster also apply for these entities. Thus, broadcasters (radio and/or television) hold the rights for the broadcast and usually also the rights to the audiovisual recording of the sports event.

Pursuant to Article 129 of the Copyright Law, radio and television organisations shall have the exclusive economic right to authorise or to prohibit the fixation of their own broadcasts; their distribution, import, retransmission or reemission by wireless means, by wire, by cable, by satellite or by any other similar proceeding, as well as by any other mode of communication to the public, including retransmission through the internet; communication to the public; rental and lending; and making available to the public.

According to the Copyright Law,<sup>1232</sup> an audiovisual recording or videogram represents any fixation of an audiovisual work or of moving sequences of images, accompanied or not by sound, regardless of the method and the support used for this fixation. Also, according to the same law,<sup>1233</sup> the producer of an audiovisual recording shall be the natural or legal person that has the initiative and undertakes the responsibility for the organisation and making up the first fixation of an audiovisual work or of moving sequences of images, accompanied or not by sound, and, having this feature, provides the necessary technical and financial means.

Pursuant to Article 110 of the Copyright Law, an audiovisual recording's producer shall have the exclusive economic right to authorise or to prohibit the reproduction by any means and in any form, of his/her own audiovisual recordings; the distribution of the original or any copies of it; its rental and lending; import; broadcasting and public communication, as well as the making available to the public any cable retransmission of

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<sup>1232</sup> Article 108 (1).

<sup>1233</sup> Article 108 (2).



this recording. Online transmissions are covered by the right to authorise or prohibit the communication to the public, including the retransmission through the internet and the making available to the public, so that any member of the public can have access, from anywhere or at any moment individually chosen, to their own broadcast and services.

Regarding the entitlement to take legal action, as mentioned above, sports event organisers assign to broadcasters their right to authorise the transmission (i.e. broadcast) of the competition. Based on the definition of broadcasting, according to Article 21 of the Copyright Law,<sup>1234</sup> broadcasters hold the exclusive economic right to authorise or to prohibit the broadcasting of the event, including its retransmission through the internet and the communication to the public of their own broadcasts against payment of an admission charge. Thus, broadcasters are entitled to take legal action in the case of infringement of broadcasting, or online transmission of their own broadcasts of the sports event.

However, it is the responsibility of the sports event's organisers (including the sport leagues organisers) to take action against any wireless transmission of signals, sounds or images, or their digital representation, including public communication by satellite for public reception by an unauthorised broadcaster, if such broadcaster does not retransmit or rebroadcast the signal of an authorised broadcaster. In the case of unauthorised broadcasting of a sports event by an unauthorised broadcaster, if the sports events organisers (including the sport leagues organiser) have entered into an exclusive agreement with the authorised broadcaster regarding the transmission of that sports event, the sports event's organisers (including the sport leagues organiser) may be held responsible even vis-à-vis the authorised broadcaster.

Usually sports events organisers, including sport leagues organisers notify all employees/subcontractors regarding the authorised broadcasters so that any unauthorised broadcaster can be properly identified in order to limit its access to the sport event.

#### 6.24.2.3. Other specific rules applicable to sports events

There are no other specific rules applicable to sports events in Romania. Furthermore, there are not any specific rules concerning the use of sports content on social media. The copyright and related rights general rules being applicable in this case.

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<sup>1234</sup> According to Article 21 of the Audiovisual Law, broadcasting includes (a) the broadcasting of a work by a broadcaster by any means that serve for the wireless transmission of the signals, sounds or images, or of digital representation thereof, including communication by satellite, for the purpose of reception by the public; b) the transmission of a work or its representation thereof, by wire, cable, optic fibre or any other similar procedure, with the exception of the computer networks, for the purpose of reception by the public.

**Table 151. Definitions of the main concepts concerning audiovisual sports events**

Concept	Existence of a definition	Relevant rights
<b>Broadcaster</b>	Yes	Related rights (and contractual rights)
<b>Sports event organiser</b>	Yes	Rights to authorise the transmission; entitlement to take legal action.

Source: Romanian response to European Audiovisual Observatory standardised survey

## 6.24.3. Remedies and sanctions applicable in the event of infringement

### 6.24.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

The special enforcement dispositions regulated in the Copyright Law, especially the procedural provisions are complemented with the general ones (common law) provided for by the Civil Procedure Code and Criminal Procedure Code.

Regarding provisional and precautionary measures, Article 188 paragraphs 3-6 of the Copyright Law provides that, if the rightsholder (or their representative, such as a collective management organisations for instance) credibly proves that his/her copyright is the subject-matter of an illicit action, present or imminent, and that this action risks creating a prejudice difficult to repair, he/she may request that the court orders provisional measures. The court may decide, to: forbid the infringement or order its provisional termination; order measures for conserving the probes; or order measures for ensuring the remedy of the damage—for this purpose, the court can order measures to be taken on the movable and immovable assets of the alleged infringer, including the blocking of his/her bank accounts and other assets. To do so, the competent authorities can order the communication of banking, financial or commercial documents, or adequate access to the pertinent information; or ordering the taking of the goods in connection with which suspicions exist of the violation of a protected right in order to prevent their introduction into the commercial circuit.

The applicable procedural rules are provided for in the Civil Procedure Code related to intellectual property (IP) rights provisional measures. These can include the detailed description with or without the sampling of the specimen, or the real seizure of the goods under dispute and, as the case may be, of the materials and instruments used to produce and/or distribute such goods. Such measures shall be taken into account in the enforcement of Criminal Procedure Code provisions (Articles 169-171). These measures



can be requested, under the same conditions, against an intermediary whose services are used by a third party for the infringement of a protected right.

Regarding claims and measures available, pursuant to Article 188 paragraph 10-15 of the Copyright Law, the owners of the infringed rights may request that the court orders the enforcement of any of the following measures: a) remittance, in order to cover the prejudices suffered, of the income resulting from the unlawful activity; b) destruction of the equipment and means belonging to the offender that were solely or mainly intended for the perpetration of the unlawful activity; c) removal from commercial circuit by seizure and destruction, of the illegally made copies; and d) dissemination of information referring to the court's decision, including the posting of the decision and its publication at the expense of the offender.

The court will order the execution of the above measures to be at the expense of the offender, unless there are well-grounded reasons for the offender not to bear the costs. Destruction and removal measures may also be ordered by the public prosecutor in connection with the closure of a case or the discontinuation of proceedings.

In ordering the above measures, the court shall respect the principle of proportionality in view of the seriousness of the infringement of the protected rights and shall take into account the interests of third parties that may be affected by such measures. The court shall communicate to the parties the solutions adopted in cases of infringement of copyright and related rights. All the above measures may be applied in cases of online piracy of sports content.

Concerning the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive), Article 185 paragraph 2 of the Copyright Law defines technological measures as the use of any technology, of a device or component that, in the course of its normal operation, is destined to prevent or restrict acts, that are not authorised by the rightsholders. Furthermore, Romanian copyright law regulates that rightsholders may apply technical measures to a work or any protected subject matter, or in the context of their communication to the public, (Article 185 paragraph 1). The infringement of technological measures are sanctioned as criminal offences as follows: (i) the act of a person that, unlawfully, produces, imports, distributes or rents, offers, in any way, for sale or rent, or possesses for selling purposes, devices or components that allow the neutralisation of the technological protection measures or performs services which lead to the neutralisation of the technological protection measures, including in the digital environment [Article 199(1)]; (ii) the act of a person who, without the right to do so, removes, for commercial purposes, from the works or other protected products or modifies on them, any information under electronic form, on the applicable copyright or related rights regime [Article 199(2)].

In such cases, the rightsholders and other persons entitled to do so may request the courts or other competent bodies to acknowledge their rights and the establishment of the infringing activity. They may ask for damages to compensate the prejudice caused. The courts may take provisional and precautionary measures and, also, measures for preserving the evidence. Respecting the principle of proportionality, at the request of the infringed rightsholder, the courts may apply the following enforcement measures: (i) the





remittance, in order to cover the prejudices suffered, of the income resulting from the unlawful activity, destruction of the equipment and means belonging to the offender that were solely or mainly intended for the perpetration of the unlawful activity; (ii) removal from commercial circuit, by seizure and destruction of, the illegally made copies and dissemination of information referring to the court's decision, including the posting and publication of the decision in the mass media at the expense of the offender. These can be applied in cases of online piracy of audiovisual sports content. Also, the infringement of the right of making available to the public (Article 194), is regulated as a criminal offence and can be sanctioned with imprisonment from six months to three years or a fine.

Moreover, the Copyright Law considers as criminal offences:

- (i) the production, import, distribution, possession, installation, maintenance or replacement in any way, of the devices for the control of access, either original or pirate ones, used for conditioned access programmes services (Article 198 paragraph 1), punishable by imprisonment from between six months and three years or a fine;
- (ii) the act of a person who unlawfully connects to, or unlawfully connects another person to, conditioned access programmes (Article 198 paragraph 2), punishable by imprisonment from between three months and two years or a fine;
- (iii) using public announcements or electronic means of communication for the purpose of promoting the pirate access of control devices of conditioned access programmes services, as well as exhibiting or presenting to the public in any mode, unlawfully, the information needed to make any sort of devices, capable of ensuring unauthorised access to the said conditioned access programmes services, or intended for the unauthorised access in any mode to such services (Article 198 paragraph 3), punishable by imprisonment from between one year and three years or a fine;
- (iv) the sale or rental of pirate access control devices (Article 198 paragraph 4) – punishable by imprisonment from between one year and three years or a fine.

All these conducts and sanctions can be directly invoked in cases concerning online piracy of audiovisual sports contents.

The Copyright Law also defines as a criminal offence the pirate access control device of whose making has not been authorised by the rightsholder in relation to a certain service of conditional access television programmes, made to facilitate the access to that service (Article 198 paragraph 5).

The Government Decision No. 7 from 8 January 2004 on the legal protection of services based on conditional access, or consisting of conditional access, regulates the forbidden activities of (i) the production, import, distribution, sale, rental or possession for commercial purpose of the illicit devices; (ii) the installation, maintenance or replacement for commercial purpose of an illicit device; and (iii) the use of commercial



communications for the purpose of promoting the illicit devices. The last-mentioned activity is sanctioned as a contravention.

#### 6.24.3.2. National bodies with competences on copyright enforcement

In Romania, except for judicial bodies, the Romanian Copyright Office<sup>1235</sup> (also referred as “ORDA”) is the national authority, with specific competencies to address copyright infringements. According to Article 180(1) of the Copyright Law, the Romanian Copyright Office also operates as specialised administrative body under the Government, being the sole regulatory authority competent for registration by national registries,<sup>1236</sup> supervision, authorisation, and technical-scientific establishment in the field of the copyright and related rights, collaborating with EU Member States.

Among its duties, the ORDA can establish and apply a range of contraventions in cases of: fixation without rightsholder’s authorisation of radio or television broadcasts [Article 190 f) of the Copyright Law], which is sanctioned by fine from EUR 608,00 to EUR 6089,43; (ii) communication to public, without rightsholder’s consent of works or related rights products [Article 190 g) of Copyright Law], which is sanctioned by fine from EUR 608,00 to EUR 6 089,43; (iii) conduct of the legal or authorised natural persons that consists in allowing the access in the spaces, to the equipment, means of transport, goods or own services, with a view to committing, by another person of a contravention provided for by the Copyright Law [Article 191(1)]. It shall be a contravention, if it is not a criminal offence, and punishable with a fine from EUR 2 029,81 to EUR 100 000,00.

The abovementioned contraventions can also be established and applied by the police officers or agents within local police or the Ministry of Interior Affaires with competences in the field. The sanctions for the above-mentioned contraventions are applying also to the legal persons.

As regard infringements of rights for sport content, ORDA can only establish and apply the above-mentioned contraventions/fines. There have been no cases in this regard, except physical piracy of CDs and DVDs of football games, gymnastic competitions/events, etc.

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<sup>1235</sup> <https://orda.ro/despre/>.

<sup>1236</sup> In particular, the ORDA manages six National Registers: National Phonograms Register, National Videograms Register, Computer Programs Register, National Private Copy Register, Optical Discs, Audio Cassettes and Video Cassettes Multipliers Register and National Works Register. Whilst copyright protection is automatic and without formalities under the Berne Convention, copyright registration in Romania provides the copyright holder with proof of his/her right.



#### 6.24.3.3. Codes of Conduct and Memorandums of Understanding

In 2012, the Romanian Association for Audiovisual Communications (“ARCA”)<sup>1237</sup> signed a collaboration protocol in the field of copyright protection regarding television and radio programmes with the General Police Inspectorate. The protocol aims to implement activities in order to prevent and control the copyright and related rights infringements regarding television and radio programmes. The protocol hasn’t been put into practice as regards any of the aforementioned infringements.

#### 6.24.3.4. Notice and take-down procedures

Notice and take-down (NTD) procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

NTD procedures can be applied for any kind of illegal content online, including in cases concerning online piracy of audiovisual sports content, provided the conditions of Article 14 of the Law No. 365/2002 on e-commerce, in conjunction with Articles 16 and 17 thereof are fulfilled. Law No. 365/2002 on e-commerce does not expressly provide for a NTD procedure.

The notification can be made by: (i) the National Management and Regulatory Authority (ANCOM or the “National Authority”);<sup>1238</sup> an interested person based on the traditional approach according to national law.

In the case of notification by the National Authority (or where measures are ordered by the National Authority),<sup>1239</sup> service providers are obliged to interrupt, temporarily or permanently, the transmission on a communications network or the storage of information provided by a recipient of that service, in particular by removing the information or blocking access to it, blocking access to a communications network or performing of any other information society service. The National Authority may act ex officio or in response to a complaint of an interested person (i.e. any person who considers himself/herself prejudiced by the information content in question). The complaint or notification must be made in writing, stating the reasons on which it is based, and must be signed and dated. The complaint cannot be lodged if a lawsuit, having the same object and the same parties, has been previously lodged. The National Authority’s decision shall be reasoned and communicated to the interested parties within 30 days from the date of receipt of the complaint or referral, or, if the National Authority

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<sup>1237</sup> The Romanian Association for Audiovisual Communications (“ARCA”), represents the main radio and TV broadcasters in Romania, <http://audiovizual.ro>.

<sup>1238</sup> The competent authority is the National Authority for Management and Regulation in Communications (ANCOM). The authority protects the interests of communications users in Romania, by promoting competition in the communications market, ensuring the management of scarce resources and encouraging innovation and efficient investments in infrastructure.

has acted *ex officio*, within 15 days from the date on which it was issued. The interested person may file an appeal against a decision taken by the National Authority within 15 days from the communication, under the sanction of revocation, to the competent administrative contentious court. The request is judged urgently, with the summoning of the parties. The sentence is final.

In case of notification by an interested person (e.g. a copyright holder) to the service provider, the Civil Procedure Code does not establish a special procedure or supplementary conditions. Thus, the notification should be done in writing, signed and dated, and should set down at least: the complaint identification information, the description of the facts, the legal norms infringed, the measures to be taken by the service provider and a term in which these measures should be accomplished. If the service provider does not comply with the notification, the injured party can file a civil claim in court or address the prosecutor's office if it is intending for a criminal action. In any case, the procedure of take-down can be put in place only if there is a court final decision.

#### 6.24.3.5. Removal and blocking orders

Two types of injunctions are provided for by the Copyright Law. On the one hand, Article 188(3) provides for interlocutory injunctions that may consist of: a) forbidding the infringement or ordering its provisional cessation; b) ordering measures to be taken for conserving the probes; c) ordering measures to be taken for ensuring damage is remedied; d) ordering the taking or handing over to the competent authorities of the goods in connection to which suspicions exist on the violation of a right provided for by the law to prevent their introduction in the commercial circuit.

Interlocutory injunctions against intermediaries are available under the same conditions [Article 188(5)], thus any third party that uses the IP right without authorisation in commercial activity (including transporters, Internet Service Providers (ISP), online shopping sites) may be subject to preliminary proceedings initiated by the injured party. Also, the courts may order the precautionary seizure of the movable and immovable property of the alleged infringer in respect of the infringements [Article 188(6)].

On the other hand, injunctions may follow a decision on the merits of the case. The court may issue, in the final decision (on the merits), establishing an IP rights infringement, an injunction – aimed at prohibiting the infringement from continuing – against the infringer and/or the intermediaries whose services are used by a third party to infringe the IPR. The court may also order the following measures: a) remittance, in order to cover the prejudices suffered, or the proceeds obtained from the unlawful act; b) destruction of the equipment and means belonging to the offender used to commit the violation; c) removal from commercial circuit by seizure and destruction of the illegally made copies; d) dissemination of information referring to the court's decision, including the posting of the decision.

Blocking injunctions can be used and issued under the conditions and in accordance with the procedure described above. However, even though the law provides



for measures to ensure that ISPs block access to copyright-infringing websites, blocking injunctions are not often used in Romania.

Dynamic and de-indexing injunctions could be used as Romania has implemented the E-commerce Directive and the IPRED. However, none of these types of injunctions have been used in practice for online piracy of audiovisual sports content.<sup>1240</sup>

#### 6.24.3.6. Measures against end-users

The courts can apply measures such as suspending or blocking access, if it is proved that illegal activity has been carried out by end-users (e.g. peer-to-peer). If the infringement was made for profit or commercial purpose, the offence would be considered aggravated. However, in practice courts have not, to date, taken such measures against end-users.

#### 6.24.3.7. Criminal sanctions

There are no specific criminal proceedings concerning sports content. Criminal proceedings apply to all the criminal offences regulated in the Copyright Law, which are sanctioned with imprisonment or fines. The quantum of fines is not regulated in the Copyright Law and there are two major categories of imprisonment: six months to three years and three months to two years. There are only two infringements for which the level of imprisonment is higher: two to seven years (if the deeds provided in Article 193 par. 1 and par. 2<sup>1241</sup> are carried out for commercial purpose); and one year to five years for the sale or rental of pirate devices for access control (Article 198 par. 4), and there is only one infringement for which the level of imprisonment is lower: one month to one year for using public announcements or electronic communication means for the purpose of promoting pirate access control devices for conditioned access programme services, as well as exhibiting or presenting to the public in any mode, unlawfully, the information needed for making devices of any sort, capable of obtaining unauthorised access to the said conditioned access programme services, or intended for the unauthorised access in any mode to such services (Article 198 par. 3).

Where a person who has committed a criminal offence regulated in the Copyright Law repairs, before the end of the first court hearing, the prejudice done to the rightsholder, the limits of the punishments are reduced by half.

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<sup>1240</sup> They have been used for instance in a case concerning peer-to-peer and BitTorrent indexing websites (see section 1.1.4.5)

<sup>1241</sup> Making of pirate goods, for the purpose of the distribution (Article 193 par. 1 letter a); placing of the pirate goods under a final import or export customs regime, under a suspensive customs regime or in free zones (Article 193 par. 1 letter b); any other modality of introducing the pirate goods on the domestic market (Article 193 par. 1 letter c); offering, distribution, possession, or storage and transportation of pirate goods, for the purpose of distribution (Article 193 par. 2);



Criminal offences are always committed with direct intent and the Criminal Procedure Code provides for specific rules regarding the competence of judges and the police. In particular, the notice methods are the following ones: complaint; denunciation; ex officio notification and; acts concluded by other finding bodies provided by law. The illicit activity must be proved and screenshots, minutes, documents etc. can consist of evidence.

**Table 152. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial bodies)	Yes
Entitlement to take legal action	Yes, rightsholders (in practice broadcasters and sports organisers – if they hold rights in the audiovisual recording)
Codes of Conduct	No
Specific proceedings	No
Specific remedies	No

**Table 153. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	No
Removal and blocking injunctions	Yes
Dynamic and/or live blocking injunctions	Not mentioned in the law; never applied in relation to sports content.
De-indexing injunctions	Not mentioned in the law; never applied
Damages and order to cease and desist	Yes
Administrative offence and remedies	Yes
Notice and take-down procedure	Yes

Source: Romanian response to European Audiovisual Observatory standardised survey

## 6.24.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and; criminal sanctions, in relation to online infringement of audiovisual sports content.

**Table 154. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
<b>Communication to the public</b>	Recognition of the right to public communication of own programmes and services of television programmes in places accessible to the public, as a prerogative of a right related to copyright (related right).	
<b>Hosting providers' knowledge and awareness of illegal activity</b>	N/A	N/A
<b>Notice and take-down</b>	N/A	N/A
<b>Measures against end-users</b>	N/A	N/A
<b>Criminal sanctions</b>	N/A	N/A

*Source: Romanian response to European Audiovisual Observatory standardised survey*

### 6.24.4.1. Communication to the public

One case was identified related to communication to the public in the audiovisual sports content field. In this case, the plaintiff (the Romanian National Television (SRTV) sued the defendant (S.C. C T S.R.L). for showing football matches, violating the benefit of the exclusivity of the plaintiff, without SRTV's consent and without the broadcast sequences bearing the TVR1 television station logo.<sup>1242</sup>

The court ordered the defendant to pay the plaintiff the amount of EUR 300 000 as compensation for the violation of the plaintiff's exclusive rights, because SRTV was the main holder of the package containing the rights to the recorded broadcast, including summaries ("highlights") and the official matches of the national football team. The essence of such acquisitions of sports rights was the "benefit of exclusivity" acquired by the broadcaster by concluding an agreement on the transfer of the right to broadcast

<sup>1242</sup> Case Law No. 6290/3/2009.



matches, in this case, for the amount of EUR 714 000.<sup>1243</sup> The court took into account the final provisions of Article 139(2) b) of the Copyright Law<sup>1244</sup>, which provides that the holders of violated rights can claim compensation representing three times the remuneration that would have been legally due for the type of use that was the object of the illicit activity. The court considered that the amount claimed by the plaintiff was reasonable.

In the judgment rendered on appeal, the defendant was ordered to pay to the plaintiff the amount of EUR 30 000, as the Bucharest Court of Appeal considered that the Bucharest Tribunal had wrongly applied Article 139 par. (2) letter b) of the Copyright Law.

At the final instance, the High Court of Cassation and Justice confirmed the Bucharest Court of Appeal's decision. The court held that sports events can be the subject of an audiovisual recording, defined in Article 106 of the Copyright Law<sup>1245</sup> as "*any fixation of an audiovisual work or of sequences of moving images, whether or not accompanied by sound, whatever the method and medium used for such fixation*" and which is protected by an intellectual property right, recognised as such in the law on copyright and related rights.

The court found that the transmission of a sporting event by any audiovisual means (television, internet, etc.) is an audiovisual recording, as it captures the images and ambient sounds from the place of the event. Therefore, even the right of televised transmission of the competitions in which the representative football teams of Romania participate, assigned by the contract concluded between Romanian Federation of Football and SRTV, has the nature of an intellectual property right, considering its object, protected by Article 106(1) of the Copyright Law.<sup>1246</sup>

This nature is even more evident in the case of broadcasters, to whom the Copyright Law, through Article 113 f),<sup>1247</sup> recognises the right to public communication of their own programmes and services in places accessible to the public, as a prerogative of a related (or neighbouring) right. In the case of broadcasters, an audiovisual recording made with their own technical means constitutes a television programme, in so far as moving elements, with or without sound, are added, at the time of fixation or subsequently, to elements specific to the broadcast, such as video, audio and/or graphic sequences, commentaries, etc. This television broadcast therefore enjoys a protection distinct from any protection granted by law to the broadcast object when the broadcast

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<sup>1243</sup> The evidence to prove economic damage cannot be brought in by invoking the price of the contract concluded between SRTV and the Romanian Football Federation due to the conditions of the contract. Indeed, SRTV [according to Article 39(4) of Law No. 8/1996] had an exclusive right to broadcast these matches, as a regulated and protected right and by Article 84 et seq. of Law No. 504/2002, regarding the exclusive right of the primary broadcaster, acquired by contract. The amount of compensation was therefore related to the expenses that SRTV incurred in order to obtain the rights, under exclusive conditions, for the transmission of matches.

<sup>1244</sup> In the form applied at that time, currently Article 188 (2).

<sup>1245</sup> In the form applied at that time, currently the definition is provided in Article 108 (1).

<sup>1246</sup> In the form applied at that time, currently the definition is provided in Article 108 (1).

<sup>1247</sup> In the form applied at that time, currently Article 110 (1) f).



fixes a pre-existing work. It is not excluded that the broadcast itself represents an audiovisual work - recognised as an intellectual creation by Article 7 e) of the Copyright Law - and this possibility applies even in the case of a sports event transmission, as in the present case, subject to case-by-case assessment as to whether the requirements of an original creation are met, in particular by special filming techniques.

#### 6.24.4.2. Online infringement of audiovisual sport content

No cases were identified in relation to online piracy of audiovisual sports content in Romania.

#### 6.24.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on the condition that the provider does not have actual knowledge of illegal activity or information, or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

No case law has been detected in Romania related to the notion of “actual knowledge.”

#### 6.24.4.4. Notice and take-down requirements

No case law has been detected concerning notice and take-down procedure regarding online piracy of audiovisual sports content.

#### 6.24.4.5. Removal and blocking orders

Blocking and dynamic injunctions are the most commonly used measures applied in practice by the Romanian courts in cases of illegal online content.

In 2009,<sup>1248</sup> the Romanian Music Industry Association (“AIMR”) filed a lawsuit against the website [www.trilulilu.ro](http://www.trilulilu.ro) and the hosting provider Hostway before the Bucharest Tribunal requesting damages, termination of use of phonograms and videograms from the AIMR repertoire and the establishment of technical protection measures by digital fingerprinting. The dispute was resolved through a transaction: Trilulilu assumed the responsibility of implementing the technical measures required by the action and concluding licence agreements with all AIMR members for the use of phonograms and videograms from their repertoire on the website [www.trilulilu.ro](http://www.trilulilu.ro).

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<sup>1248</sup> Case Law No. 30662/3/2009.



In 2013, in another case, AIMR<sup>1249</sup> sent a notification to a hosting service provider, Clax Telecom, to remove pirated content or suspend hosting services for sites with illicit content.<sup>1250</sup> These sites promoted national and international music repertoire, without paying the rights due to the production companies. Following the company's refusal to comply with the law, AIMR sued Clax Telecom, requesting the payment of the damage caused by the refusal to eliminate the pirated hosted content. The Bucharest Court of Appeal ordered Clax Telecom to pay damages and court costs. The liability of the hosting service provider was analysed in relation to the provisions of Law No. 365/2002 on e-commerce and the Copyright Law. The Court decided that, according to Article 14 of Law No. 365/2002, a hosting service provider, following the notifications from the rightsholders, is obliged to eliminate the hosted pirated content or to suspend the hosting service of the respective site.

In another case<sup>1251</sup> regarding peer-to-peer and BitTorrent indexing websites, the plaintiff obtained the blocking access of internet service providers through the issuing of blocking and dynamic injunctions (main site and proxy sites).<sup>1252</sup>

In April 2020, the largest Romanian torrent site, [www.filelist.ro](http://www.filelist.ro), hosting hundreds of terabytes of films, games, music, software and pirated books, was closed following a decision of the High Court of Cassation and Justice. A message signed by the Ministry of Justice was visible on the old address of the website as follows: "This domain name is seized in accordance with the provisions of Article 249 of the Criminal Procedure Code. This domain name is the subject of criminal offence proceedings."<sup>1253</sup>

#### 6.24.4.6. Measures against end-users ordered by courts

Measures of suspension or blocking of internet access can be taken against end-users if the illegal activity is of their making (e.g. peer-to-peer). However, there is no case law in Romania concerning such measures taken against end-users.

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<sup>1249</sup> <https://www.aimr.ro/furnizorii-de-servicii-de-hosting-sunt-raspunzatori-de-continutul-pirat-gazduit/> - no English version is available.

<sup>1250</sup> [www.muzicalove.ro](http://www.muzicalove.ro), [www.mp3alese.info](http://www.mp3alese.info), [www.muzica.onlinefree.ro](http://www.muzica.onlinefree.ro), [www.netxplor.ro](http://www.netxplor.ro), [www.vitanclub.net](http://www.vitanclub.net), [www.allmuzica.com](http://www.allmuzica.com), [www.muzicazu.net](http://www.muzicazu.net), [www.muzicmp3.ws](http://www.muzicmp3.ws).

<sup>1251</sup> Case Law No. 28072/3/2017 –

[http://portal.just.ro/3/SitePages/Dosar.aspx?id\\_dosar=300000000773180&id\\_inst=3](http://portal.just.ro/3/SitePages/Dosar.aspx?id_dosar=300000000773180&id_inst=3).

<sup>1252</sup> [www.filmehd.net](http://www.filmehd.net), that can be accessed to the following on-line location: [www.filmehd.net](http://www.filmehd.net); [www.filmeonline2013.biz](http://www.filmeonline2013.biz), that can be accessed to the following on-line location: [www.filmeonline2013.biz](http://www.filmeonline2013.biz); [www.thepiratebay.org](http://www.thepiratebay.org), that can be accessed to the following main on-line location: [www.thepiratebay.org](http://www.thepiratebay.org); and the following on-line proxy locations: <http://bay.maik.rocks>, <http://bayproxy.net>, <http://piratebay.click>, <http://piratebay.red>, <http://piratebayblocked.com>, <http://pirateproxy.click> and <http://ukpirate.click>.

<sup>1253</sup> However, it must be mentioned that just a few days after the site was shut down, it was back online, but under the i.o. domain name, dedicated to the British Indian Ocean Territory.

#### 6.24.4.7. Compensation criteria adopted by the courts

A rightsholder may request the courts or other competent bodies, as the case may be, to acknowledge their rights and the establishment of the infringing thereof and may claim damages to compensate the prejudice caused.

In establishing damages, the court takes into account [Article 188(2)] (a) either criteria such as negative economic consequences, particularly any non-earned benefit; the benefits earned unlawfully by the offender and; as the case may be, other elements besides economic factors, such as moral damage caused to the rightsholder or, in the case that the criteria under (a) cannot be applied; (b) the court grants damages representing triple the amount that would have been lawfully owed for the infringement.

#### 6.24.4.8. Criminal sanctions ordered by the courts

There are no cases related to the application of criminal sanctions concerning audiovisual sports content.

### 6.24.5. Reports and studies

There are no reports or legal studies about online piracy of protected content in Romania.<sup>1254</sup> Neither are there any official reports or studies on online piracy of protected content or on the technologies and business models used for the illegal streaming of sports content, nor are there any studies describing the legal offer of online sports content. Regarding awareness campaigns related to online piracy, many were conducted during the period 2012-2017. However, these have not been carried out in the last few years due to the lack of material support, and the lack of implementation of the campaigns. The campaigns were mostly conducted by associations/representatives of rightsholders, together with the public institutions in the field (Romanian Copyright Office, Police, Prosecutors Office, etc.).

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<sup>1254</sup> However, the following activities and modalities can be identified for the online sports events: the content is obtained from the ether (DVB-T), then transcoded and distributed through rented servers; the content is obtained from cable or satellite (DVB-C or DVB-S), then transcoded and distributed through rented servers (for satellite this method involves illegal access to the transmitted content); the content is obtained from the HDMI outputs of some electronic devices (PC, STB, etc.), then transcoded and distributed through rented servers; distribution using peer-to-peer streaming technologies; impersonating browsers with legitimate access to legitimate/legal content distribution sites to get URL's stream playback; using a proxy server between a legitimate platform and illegitimate distributions; by assigning a VPN for access outside the territory; and obtaining access to a platform through identity theft or bank cards, and then the content is redistributed through proxies.



AIMR is very active in combating piracy in the music and audiovisual field. AIMR has published some projects and campaigns to encourage young people to consume music by buying, downloading or listening online from legal sources. The first “Reward Your Idol” campaign was carried out in partnership with the US Embassy in Bucharest and with Universal Music Romania, a member of AIMR, the collective management organisation of phonograms producers UPFR and the collective management organisation of videograms producers UPVR. Together with the US Embassy, AIMR also organised a series of seminars in order to train police officers, magistrates and prosecutors. AIMR, in collaboration with Romanian Copyright Office and Business Software Alliance, published and adapted for Romania the “Music, Film, TV and the internet. A guide for parents and teachers”. The guide was disseminated in schools. AIMR also made some videoclips targeting anti-piracy measures which were broadcast on TV.<sup>1255</sup>

## 6.24.6. Data compilation

This country report is based on data compiled by Ana Maria Marinescu, Intellectual Property Law PhD. student, Director General of PERGAM and expert in copyright and related rights, and collective management; Cristian Jura, a professor and expert of Sports Law; Maria Luisa Creată, a lawyer and expert in copyright and related rights, collective management, audio-visual production and broadcasting.

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<sup>1255</sup> [https://www.youtube.com/watch?v=xMlTH5aE\\_q0](https://www.youtube.com/watch?v=xMlTH5aE_q0).



## 6.24.7. Annex

**Table 155. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive 98/84/EC</b>	Law No. 8/1996 on copyright and related rights (Copyright Law) Government Decision No. 810 from July 15, 2009
<b>Article 5 of Conditional Access Directive 98/84/EC - Infringing activities</b>	Article 198 Copyright Law..
<b>InfoSoc Directive 2001/29/EC</b>	Copyright Law.
<b>Article 6 InfoSoc - Obligations as to technological measures</b>	Article 185 Copyright Law.
<b>Article 8 InfoSoc - Sanctions and remedies.</b>	Articles 35 and 39 Copyright Law.
<b>IPRED 2004/48/EC</b>	Copyright Law.
<b>Article 6 IPRED – Evidence and Article 7 IPRED - Measures for preserving evidence</b>	Article 188 Copyright Law.
<b>Article 8 IPRED - Right of information</b>	Article 188 et seq. Copyright Law
<b>Article 9 IPRED - Provisional and precautionary measures</b>	Article 188 et seq. Copyright Law
<b>Article 10 IPRED - Corrective measures</b>	Article 188 et seq. Copyright Law
<b>Article 11 IPRED – Injunction</b>	Article 188 et seq. Copyright Law
<b>Article 12 IPRED – Alternative measures</b>	Article 188 et. seq. Copyright Law
<b>Article 13 IPRED - Damages</b>	Article 188 Copyright Law
<b>E-Commerce Directive 2000/31/EC</b>	Law No. 365/2002 on the e-commerce and the Methodological Norms from November 20, 2002 for applying the Law No. 365/2002 on the e-commerce approved by the Government Decision No. 1308/2002.
<b>Article 12-15 E-Commerce Directive – Liability of intermediary service providers</b>	Articles 11 – 18.
<b>Article 17 E-Commerce Directive - Out-of-court dispute settlement</b>	Articles 19.
<b>Art 20 E-Commerce Directive – Sanctions</b>	Articles 23.
<b>DSM Directive EU 2019/790</b>	Not transposed to the date (as at May 2021).



## 6.25. SE – Sweden – National legal summary<sup>1256</sup>

### 6.25.1. General legal framework

#### 6.25.1.1. National legislation on copyright<sup>1257</sup>

In Sweden, the laws that regulate the scope and the enforcement of copyright and related rights<sup>1258</sup> are, in particular:

- The Act on Copyright in Literary and Artistic Work (1960:729) (*Lag (1960:729) om upphovsrätt till litterära och konstnärliga verk*) (the Copyright Act)<sup>1259</sup>
- The Copyright Regulation (1993:1212) (*Upphovsrättsförordningen (1993:1212)*)<sup>1260</sup>
- The International Copyright Regulation (1994:193) (*Internationella upphovsrättsförordningen (1994:193)*).<sup>1261</sup>

In Sweden, copyright infringement is considered both a criminal offence and a civil law violation. To class as an infringement it doesn't matter whether it is done for profit or not. However, it can be of importance for the applicability and scope of the different sanctions.

The Copyright Act is supplemented with the following acts, which are relevant for preventing illegal transmission of online sports events:

- The Act on electronic commerce and other information society services (2002:562) (*Lag (2002:562) om elektronisk handel och andra informationssamhällets tjänster*)<sup>1262</sup>
- The Act on the prohibition of certain decoding equipment (2000:171) (*Lag (2000:171) om förbud beträffande viss avkodningsutrustning*)<sup>1263</sup>

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<sup>1256</sup> The country report on Sweden incorporates the feedback received from Patrik Sundberg (Ministry of Justice) during the checking round with the national competent institutions.

<sup>1257</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>1258</sup> There are no official translations of the copyright laws. However, there is a list of non-official translations of some Swedish laws in Ds 2001:7 by the Swedish Government. All other translations are made by the author of this report.

<sup>1259</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1960729-om-upphovsratt-till-litterara-och\\_sfs-1960-729](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1960729-om-upphovsratt-till-litterara-och_sfs-1960-729).

<sup>1260</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/upphovsrattsforordning-19931212\\_sfs-1993-1212](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/upphovsrattsforordning-19931212_sfs-1993-1212).

<sup>1261</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/internationell-upphovsrattsforordning-1994193\\_sfs-1994-193](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/internationell-upphovsrattsforordning-1994193_sfs-1994-193).

<sup>1262</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2002562-om-elektronisk-handel-och-andra\\_sfs-2002-562](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2002562-om-elektronisk-handel-och-andra_sfs-2002-562).

<sup>1263</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2000171-om-forbud-betraffande-viss\\_sfs-2000-171](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2000171-om-forbud-betraffande-viss_sfs-2000-171).

- The Act on responsibility for electronic bulletin boards (1998:112) (*Lag (1998:112) om ansvar för elektroniska anslagstavlor*).<sup>1264</sup>

### 6.25.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>1265</sup> has not been transposed to date (as at October 2021).

**Table 156. Regulatory framework**

EU directive	National law
DSM Directive	N/A
Intellectual Property Rights Enforcement Directive (IPRED)	Chapter 7, Act on Copyright in Literary and Artistic Work (1960:729) ( <i>Upphovsrättslagen</i> ) (Copyright Act) <sup>1266</sup>
Information Society (InfoSoc) Directive	Copyright Act (1960:729) ( <i>Upphovsrättslagen</i> )
E-Commerce Directive	Act (2002: 562) on electronic commerce and other information society services ( <i>Lag (2002:562) om elektronisk handel och andra informationssamhällets tjänster</i> ) <sup>1267</sup> Act (1991:980) on trade with financial instruments ( <i>Lagen handel med finansiella instrument</i> ) <sup>1268</sup> Consumer Credit Act (1992:830) ( <i>Konsumentkreditlagen</i> ) <sup>1269</sup> Marketing Act (2008:486) ( <i>Marknadsföringslagen</i> ) <sup>1270</sup>

<sup>1264</sup> <https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1998112-om-ansvar-for-elektroniska-sfs-1998-112>.

<sup>1265</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

<sup>1266</sup> <https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1960729-om-upphovsratt-till-litterara-och-sfs-1960-729>; <https://www.wipo.int/edocs/lexdocs/laws/en/se/se124en.pdf>

<sup>1267</sup> <https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2002562-om-elektronisk-handel-och-andra-sfs-2002-562>.

<sup>1268</sup> <https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1991980-om-handel-med-finansiella-sfs-1991-980>.

<sup>1269</sup> <https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/konsumentkreditlag-1992830-sfs-1992-830>.

<sup>1270</sup> Transposed into the Marketing Act (1995:450), which was replaced by the Marketing Act (2008:486) (*Marknadsföringslagen*):



**Conditional Access Directive**

Act (2000: 171) on prohibition regarding certain decoding equipment (*Lag (2000:171) om förbud beträffande viss avkodningsutrustning*)<sup>1271</sup>

Source: Swedish response to European Audiovisual Observatory standardised survey

## 6.25.2. National rules applicable to audiovisual sports content

### 6.25.2.1. Legal definitions of “broadcaster” and “sports event organiser”

There is no definition of “broadcaster” in the Copyright Act. In Sweden, a definition of “broadcaster” is provided in Chapter 3, Article 1, paragraph 15, of the Act on Radio and TV (*Radio- och tv-lag (2010:696)*)<sup>1272</sup> according to which a broadcaster is a media service provider providing audio radio broadcasts, television broadcasts or searchable teletext.

Also, Chapter 3, Article 1, paragraph 22, of the Act on Radio and TV provides a definition of “television broadcast” as follows:

*“television broadcast” means a broadcast of or to broadcast television programmes by means of electronic communications networks where the broadcast (a) is provided by a media service provider; (b) is addressed to the public, and c) is intended to be received by technical means.*

There is no specific definition of “sports event organiser” in Swedish law.

### 6.25.2.2. Legal protection related to sports events

Sports events are normally held at private properties or rented municipal properties. By contract (the purchase of tickets), the owner or tenant (often a local sports association) can set rules for recording, etc. by the audience. The regional or main sports associations, such as the Skånes Football Association (*Skånes Fotbollsförbund*) or the Swedish Football Association (*Svenska Fotbollsförbundet SvFF*), can licence the right to record or broadcast the sports events to a broadcaster or one or more media companies (depending on, for example, the league).

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[https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/marknadsforingslag-2008486\\_sfs-2008-486](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/marknadsforingslag-2008486_sfs-2008-486).

<sup>1271</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2000171-om-forbud-beträffande-viss\\_sfs-2000-171](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2000171-om-forbud-beträffande-viss_sfs-2000-171)

<sup>1272</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/radio--och-tv-lag-2010696\\_sfs-2010-696](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/radio--och-tv-lag-2010696_sfs-2010-696)



Sports event broadcasts and online transmissions are protected by related rights, as provided by Chapter 5 of the Copyright Act. Article 46 thereof grants related rights to the producer of the recording of sound or of moving images for the first fixation, which include the exclusive right to make copies of it and to make it available to the public. In addition, Article 48 of the Act provides for the related rights of broadcasters in the broadcast signal, which include the exclusive right to exploit the broadcast (1) by fixing the broadcast on a material support from which it can be reproduced; (2) by making copies of a fixation of the broadcast; (3) by distributing copies of it to the public; (4) by permitting a rebroadcast or a communication to the public in places accessible to the public against the payment of an entrance fee, or; (5) by permitting a fixation of the broadcast to be communicated, by wire or wireless means, to the public in such a way that members of the public may access the fixation from a place and at a time individually chosen by them.

Regarding the entitlement to take legal action, the rightsholders (the producer, and/or the broadcaster and, in some cases, the collective management society)<sup>1273</sup> shall be entitled to sue for copyright infringement.

### 6.25.2.3. Other specific rules applicable to sports events

No other specific rules apply to sports event organisers in Sweden. Furthermore, there are no specific rules regarding the use of sports content in social media in Swedish law.

**Table 157. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
Broadcaster	Yes	Related rights
Sports event organiser	No	Contractual rights (e.g. to authorise the recording)

Source: Swedish response to European Audiovisual Observatory standardised survey

<sup>1273</sup> Copyswede, <https://www.copyswede.se>.



## 6.25.3. Remedies and sanctions applicable in the event of infringement

### 6.25.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

Chapter 7 of the Copyright Act establishes penal and civil liability in relation to copyright infringement and provides for the following remedies, all of which can be used in relation to online piracy of audiovisual sports content: criminal sanctions (Article 53); forfeiture (Article 53a); injunctions, on penalty of a fine (Article 53b); temporary (interim) injunctions (Article 53b); orders to provide information (Article 53c-f); orders to pay a pecuniary compensation for appropriate measures to disseminate information about the judgment (Article 53h); compensation (Article 54); damages (tort) (Article 54); recalling from channels of commerce, altering, or destroying (Article 55); ordering an investigation for the purpose of preserving evidence relating to the infringement or violation (Article 56a-56h). The same sanctions and remedies are applicable for both copyright (Article 57).

Concerning the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive), Chapter 6a, Article 52 b-h of the Copyright Act provides for prohibited acts under copyright law. In particular, it is prohibited, under Article 52d, to circumvent, without the consent of the author, any digital or analogue lock which prevents or limits the making of copies of a work protected by copyright, to circumvent a technological process, such as encryption, that prevents or limits the making available to the public of a work protected by copyright, or to circumvent any other technological measure that prevents or limits such acts of making content available.

Furthermore, according to Article 52e, it is prohibited to manufacture, import, transfer, distribute by, for instance, sale or rental, or to possess for commercial purposes any devices, products or components, or to make available services, which (1) are promoted, advertised or marketed for the purpose of circumvention of a technological measure; (2) other than to circumvent a technological measure, have only a limited interest from a commercial point of view, or a limited scope of commercial use; or (3) are primarily designed, constructed, adapted or produced for the purpose of enabling or facilitating a circumvention of a technological measure.

It is also prohibited, under Article 52g of the Copyright Act, to remove or alter, without the consent of the author, any electronic rights management information relating to a work protected by copyright, and to exploit a work protected by copyright, or a copy of it, that has been altered by distributing it, importing it for the purpose of distribution or communicating it to the public. Pursuant to Article 57 b of the Copyright Act, such acts may also constitute a criminal offence and be punished by fines or imprisonment for not more than six months. It is also a criminal offence with the same penalty to sell, lease or possess for sale, lease, or other commercial purposes a prohibited device solely intended



for facilitating unauthorised removal or circumvention of a device placed to protect a computer program against unauthorised reproduction (Article 57a).

All existing Swedish provisions on the protection of technological measures and rights management information can be applicable if the infringed sports audiovisual content is protected by intellectual property (IP) law.

Remedies applicable to cases concerning online piracy of audiovisual sports content can also be found in the Act (2000: 171) on prohibition regarding certain decoding equipment (*Lag (2000:171) om förbud beträffande viss avkodningsutrustning*)<sup>1274</sup> (transposing the Conditional Access Directive). The law prohibits the manufacture, importation, distribution, sale, rental, or installation of decoding equipment, nor may such equipment be held, maintained, or replaced, professionally or for commercial purposes, in order to make a service available in an interpretable form without the service provider's approval. The sanctions are specifically: (i) a fine or imprisonment for a maximum of two years and liability shall not be imposed if the conduct is punishable by a penalty in the Swedish Criminal Code (Articles 6 and 6a); (ii) criminal actions may be initiated by a public prosecutor if there is a complaint from an injured party or if such an action is called for in the public interest (Article 10).

#### 6.25.3.2. National bodies with competences on copyright enforcement

There is no national authority (e.g. administrative body) other than judicial bodies with competences to address copyright infringement in Sweden.

#### 6.25.3.3. Codes of conduct and Memorandums of Understanding

There is no code of conduct and/or memorandum of understanding relating to the enforcement of IP rights and the fight against online piracy adopted either by public or private entities in Sweden.

#### 6.25.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

The law does not provide for a notice and take-down procedure in Sweden. However, section 5 of the Act on responsibility for electronic bulletin boards (1998:112)

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<sup>1274</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2000171-om-forbud-betraffande-viss\\_sfs-2000-171](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2000171-om-forbud-betraffande-viss_sfs-2000-171).



(*Lag (1998:112) om ansvar för elektroniska anslagstavlor*)<sup>1275</sup> provides for an obligation for providers of an “electronic bulletin board”<sup>1276</sup> to remove certain types of content posted by users on their services, including obviously copyright-infringing content (section 5 paragraph 2).

According to section 4 of this act, the provider of an electronic bulletin board shall, in order to fulfil its obligation under section 5, have such supervision of the service as may reasonably be required having regard to the scope and nature of the activity. Although Article 7 provides for criminal sanctions if a service provider fails to fulfil this obligation, these only apply in the case of illegal and harmful content (such as content inciting hatred, child pornography, etc.), and do not apply in the case of (obviously) copyright-infringing content,<sup>1277</sup> for which the liability provisions of the Criminal Code and the Copyright Act apply.

There is also a notice and take-down procedure in the the Act on electronic commerce and other information society services (2002/562) (*Lag (2002:562) om elektronisk handel och andra informationssamhällets tjänster*).<sup>1278</sup> However, this notice and take-down procedure (a liability exemption provision) only absolves an intermediary from compensatory damages or administrative penalties.<sup>1279</sup> The notice and take-down procedure is found in Article 18, which states that a service provider that stores information provided by a service recipient shall not be liable to pay damages or pay a penalty fee due to the content of the information, provided that the provider (1) is not aware of the existence of the illegal information or activity and, as regards the obligation to compensate for damage, is not aware of any facts or circumstances which make it clear that the illegal information or activity exists; (2) as soon as he/she acquires such knowledge or awareness without delay prevents further dissemination of the information.

#### 6.25.3.5. Removal and blocking orders

Under Articles 53b and 57 of the Copyright Act, an injunction can be requested by the rightsholder. More specifically, according to Article 53b, upon application by the author or a party who, on the basis of a licence, has the right to exploit the work, the court may issue an injunction prohibiting, under penalty of a fine, a party who commits, or

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<sup>1275</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1998112-om-ansvar-for-elektroniska\\_sfs-1998-112](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1998112-om-ansvar-for-elektroniska_sfs-1998-112).

<sup>1276</sup> An “electronic bulletin board” is, according to section 1, a service for the electronic transmission of messages. The message can consist of text, images, sound or other information.

<sup>1277</sup> Article 7 provides as follows: “Anyone who intentionally or through gross negligence violates section 5, first paragraph, is sentenced to a fine or imprisonment for a maximum of six months or, if the crime is serious, to imprisonment for a maximum of two years. In minor cases, they should not be held liable.”

<sup>1278</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2002562-om-elektronisk-handel-och-andra\\_sfs-2002-562](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2002562-om-elektronisk-handel-och-andra_sfs-2002-562)

<sup>1279</sup> The service provider who transmits or stores information for another may be held liable for an offence relating to the content of the information only if the offence was committed intentionally (section 19 A of the Act on electronic commerce and other information society services).



contributes to the commission of, an act constituting an infringement or violation referred to in the Copyright Act from continuing (i.e. the rightsholder needs first to sue and prove the infringement in a civil law proceeding in order to request the court to issue the injunction). The Swedish Copyright Act does not distinguish between different injunctions. Article 53b states that a court can issue a final or interim injunction against anyone that infringes or contributes to the infringement. Consequently, an injunction (interim and final) can be granted against an intermediary if it is considered secondarily liable for infringement (or primarily liable).

However, if the rightsholder shows a probable cause that an act constituting an infringement or a contribution to that act, takes place and it can reasonably be expected that the defendant, through the continuation of the act diminishes the value of the exclusive right, the court may issue an injunction, on penalty of a fine, for the time until the case has been finally adjudicated (i.e. an “interim” or “temporary” injunction). No injunction may be issued before the defendant has been given an opportunity to respond, unless a delay would entail a risk of damage. This also applies to acts constituting attempts, and to preparatory acts relating to infringements or violations. Such interim injunctions may only be issued if the plaintiff deposits a security with the court for the damages that may be caused to the defendant.

Moreover, in order to verify whether there are the conditions to act, the court will conduct a proportionality assessment.

#### 6.25.3.6. Measures against end-users

Swedish national law does not provide any specific rules related to measures against end-users.

#### 6.25.3.7. Criminal sanctions

Article 53 regulates criminal offences and provides that an act committed wilfully or by gross negligence can be punished by fines or imprisonment for not more than two years. If the crime was committed intentionally and is regarded as serious, the person can be sentenced to imprisonment for a minimum of six months and a maximum of six years. When assessing whether the crime is serious, special considerations must be given to whether the act was (i) preceded by special planning, (ii) part of a crime committed in an organised manner, (iii) of great extent, (iv) otherwise of a particularly dangerous nature. When assessing the seriousness of the crime, the judge shall conduct an overall assessment. Both these particular considerations (intent and degree of seriousness) and



other relevant circumstances (e.g. whether the act caused significant damages or resulted in very significant financial gains) may be decisive.<sup>1280</sup>

On the procedural side, there is no special criminal procedure for copyright infringements. If the sports production is protected by copyright, the criminal procedure's general legal framework will also apply to infringement cases, including online infringement. A criminal process starts with an investigation, and after the indictment, the trial begins. According to the Code of Judicial Procedure (*Rättegångsbalken (1942:740)*)<sup>1281</sup> Chapter 23, Article 1, a preliminary investigation shall open as soon as a crime is susceptible to public prosecution or through a report or by other means. It is the police and the prosecutor that decide whether an investigation should open. On this point, Article 59 of the Copyright Act states that a public prosecutor may initiate criminal actions if the action is called for in the public interest. It is the public prosecutor who brings public prosecutions (see Chapter 20, Article 6 of the Code of Judicial Procedure (*Rättegångsbalken (1942:740)*). When conditions for prosecution are satisfied, the prosecutor has an absolute duty to prosecute.<sup>1282</sup>

Even if Sweden does not have a special procedure for copyright infringement, there are prosecutors and police officers specialised in investigating intellectual property cases. Criminal sanctions are also the remedy in the Act (2000: 171) on prohibition regarding certain decoding equipment (*Lag (2000:171) om förbud beträffande viss avkodningsutrustning*)<sup>1283</sup> (transposing the Conditional Access Directive). The same general legal framework for criminal proceedings applies to all criminal offences in Sweden. According to section 10 of the law, a prosecutor may bring charges for violations of the law if the plaintiff reports the crime to the prosecutor or prosecution is justified from a general point of view. There are also criminal sanctions in the Act on responsibility for electronic bulletin boards (1998:112) (*Lag (1998:112) om ansvar för elektroniska anslagstavlor*).

**Table 158. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content	No, national copyright law will apply
Specific rules on the use of sports content in social media	No, national copyright law will apply

<sup>1280</sup> Government Bill, Proposition 2019/20:149. *Skräpta straff för de allvarligaste fallen av immetarilrättsintrång*, p. 50.

<sup>1281</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattegangsbalk-1942740\\_sfs-1942-740](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattegangsbalk-1942740_sfs-1942-740).

<sup>1282</sup> For an overview of Swedish criminal procedure, see Christoffer Wong, Lund University, Swedish Criminal Procedure, 2012:

[https://www.congreso.es/docu/docum/ddocum/dosieres/sleg/legislatura\\_10/spl\\_85/pdfs/24.pdf](https://www.congreso.es/docu/docum/ddocum/dosieres/sleg/legislatura_10/spl_85/pdfs/24.pdf)

<sup>1283</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2000171-om-forbud-betraffande-viss\\_sfs-2000-171](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2000171-om-forbud-betraffande-viss_sfs-2000-171).



<b>Specific competent bodies (other than than judicial bodies)</b>	No
<b>Entitlement to take legal action</b>	Yes, rightsholders (broadcaster, producer)
<b>Codes of conduct</b>	No
<b>Specific proceedings</b>	No
<b>Specific remedies</b>	No

Source: Swedish response to European Audiovisual Observatory standardised survey

**Table 159. National remedies in the case of copyright infringement**

<b>Typology</b>	<b>Description</b>
<b>Criminal prosecution and criminal sanctions</b>	Yes
<b>Differentiation of criminal sanctions based on acting for profit</b>	Yes
<b>Removal and blocking injunctions</b>	Yes
<b>Dynamic and/or live-blocking injunctions</b>	Yes
<b>De-indexing injunctions</b>	Not mentioned in national law; never applied
<b>Damages and orders to cease and desist</b>	Yes
<b>Administrative offence and remedies</b>	Yes
<b>Notice and take-down procedures</b>	Yes

Source: Swedish response to European Audiovisual Observatory standardised survey

## 6.25.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions, in relation to online infringement of audiovisual sports content.



**Table 160. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
Communication to the public	Hyperlinking to live broadcast of ice hockey matches was not considered an infringement (communication to the public) as the matches were not protected by copyright. But it was an infringement of the broadcaster's right to show the action replay.	NJA 2015 s. 1097
Hosting providers' knowledge and awareness of illegal activity	N/A	N/A
Notice and take-down	N/A	N/A
Measures against end-users	N/A	N/A
Criminal sanctions	See above NJA 2015 s. 1097 and below 1.1.4.1 – day fines  Approximately 60 cases were detected on the Act (2000: 171) on prohibition regarding certain decoding equipment ( <i>Lag (2000:171) om förbud beträffande viss avkodningsutrustning</i> ). Sanctions in these cases are primarily day fines, conditional sentences and damages.	

Source: Swedish response to European Audiovisual Observatory standardised survey

#### 6.25.4.1. Communication to the public

There are many cases related to the concept of communication to the public and copyright infringement, but only one case in Sweden specifically concerned audiovisual sports content and the protection of sports events, namely the Supreme Court case, *NJA 2015 s. 1097* “<sup>1284</sup> *C More Entertainment*”, in which a request for a preliminary ruling was also made to the Court of Justice of the European Union (CJEU).<sup>1285</sup>

In this case, the pay-TV provider, C More Entertainment AB (C More Entertainment) sued Mr L. Sandberg (L.S.), a private person who was providing, on an internet site, hyperlinks designed to allow internet users to gain access to the live broadcast, on another site, of ice hockey matches transmitted by C More Entertainment, and whose access had been restricted to their customers. The link provided by Mr. L.S. made it possible to circumvent the payment wall.

Mr L.S. was prosecuted before the District Court (*Hudiksvalls tingsrätt*) for offences against the Copyright Act and was found guilty, on 10 November 2010, of an infringement of the copyright of which, in the view of that court, C More Entertainment was the holder

<sup>1284</sup> <https://www.domstol.se/globalassets/filer/domstol/hogstodomstolen/avgoranden/2015/b-3510-11.pdf>.

<sup>1285</sup> See: CJEU C-279/13, ECLI:EU:C:2015:199, C More.





and was fined and ordered to pay damages and interest to that company. Both Mr L.S. and C More Entertainment appealed against that judgment before the Court of Appeal of Nedre Norrland (*Hovrätten för Nedre Norrland*). By a decision of 20 June 2011, that court found that no part of the commentators', cameramen's or picture producers' work on the broadcasts of the ice hockey matches, taken on its own merits or some or all of those parts taken together, reached the level of originality required for copyright protection under the Copyright Act. Next, the court held that, as regards the broadcasts at issue in the main proceedings, C More Entertainment was not the holder of a copyright, but of related rights, which had been infringed. Consequently, the court ordered Mr L.S. to pay fines higher than those imposed at first instance, but slightly reduced the compensation awarded to C More Entertainment.

C More Entertainment brought an appeal against that judgment before the Supreme Court (*Högsta domstolen*), seeking a declaration that it is the holder of copyright and to have the amount of damages due to it reviewed and increased. The Supreme Court had to examine whether the broadcasts of the ice hockey matches produced by C More Entertainment enjoy protection under the Copyright Act. The court stated that, in order for a television broadcast of a sporting event to be regarded as having a high level of creativity, the content of the broadcast must go beyond what is produced by the conditions of the match or competition itself to such an extent that the content can be regarded as the result of an individual intellectual creation.

The court argued that the fact that the protection of broadcasts by broadcasters has been specifically regulated does not mean that the content of the broadcasts cannot be protected by copyright. Copyright applies to the creator of, for example, a literary work or a film work even when it appears in a radio or television broadcast. Copyright may also belong to a broadcaster who holds the right to the content of the broadcast, provided that he/she can be considered to have created a literary or artistic work.<sup>1286</sup>

The court pointed out that the central element in the broadcasting of a sporting event is the match itself or the competition. As a rule, this is not protected by copyright. Interviews and reports in connection with a match may, however, constitute literary works. And the work of the image producers and cameramen may also be protected as works. In order for a sports broadcast, or parts of it, to be considered as such, the content of the broadcast must go beyond the scope of what is produced by the conditions of the match or competition itself so that it can be considered the result of an original intellectual creation.

The Supreme Court took note of the television broadcasts in question (the number of cameras used, the number of staff involved – a commentator, a picture producer, cameramen –, studio sessions, content before and after the match in the form of sponsorship, interviews, etc.). Based on these elements, the court held that, even taking

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<sup>1286</sup> The CJEU has, *inter alia*, in its judgment of 16 July 2009 in case C-5/08 Infopaq (EU:C:2009:465) formulated the requirement for a work to benefit from copyright (i.e. it must be original).



into account certain choices in the detail of the execution and the fact that the broadcasts contained occasional so-called graphic elements, they could not be considered the result of an intellectual creation in their own right. The broadcasts did not, in any part or as a whole, satisfy the requirement as to the quality of the work. In conclusion, the Supreme Court upheld the judgment of the Court of Appeal, according to which the broadcasts in question are not protected by copyright. In accordance with the judgment of the Court of Appeal, which had not been appealed, Mr. L.S. was found guilty of infringement of related rights in respect of the replay sequences under Paragraph 46 of the Copyright Act (i.e. related rights of the producer over the recording of sounds or moving images). Mr. L.S. was sentenced to 30 day fines.

When it comes to internet service providers (ISPs), they are generally considered as indirect infringers or contributors (secondarily liable for copyright infringement).<sup>1287</sup> The Patent and Market Court of Appeal stated, in Case PMT 11706/15, that an ISP that provides its subscribers with access to unlawful material shall be deemed to have participated in copyright infringement. This means that an injunction can be issued against such an internet provider. The court also said that it does not require criminal liability for an injunction against the internet provider.

#### 6.25.4.2. Online infringement of audiovisual sports content

In Sweden there are also several cases<sup>1288</sup> under the Act (2000: 171) on prohibition regarding certain decoding equipment (*Lag (2000:171) om förbud beträffande viss avkodningsutrustning*).<sup>1289</sup> Although it is difficult to ascertain whether this equipment also includes access to illegal audiovisual sports content, in most cases, it is sold for free access to TV channels. All of these were criminal cases and included a demand for compensation from the plaintiffs. In Supreme Court case NJA 2013 s. 966, the court stated that the compensation should be based on the time during which the illegal use had taken place and the fee charged for the legal use. This was confirmed in NJA 2018 s. 66 where the Supreme Court stated that the compensation should be based on the fee for the service excluding VAT. Supreme Court case NJA 2000 s. 325 was about how to calculate pure economic loss in these cases.

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<sup>1287</sup> Court of Appeal (*Svea Hovrätt*) 2010-05-05 Ö7131-09 and Ö8773-09 and Patent and Market Court of Appeal, 2017-02-13, PMT 11706-15. See also Court of appeal decision in *The Pirate Bay*, RH 2013:27.

<sup>1288</sup> See for example: Supreme Court case NJA 2000 s. 325, and 2013-11-20, T-6015-11 and Court of Appeal (*Hovrätten för Nedre Norrland*) 2017-05-30, B 1450-16, Court of Appeal (*Göta Hovrätt*) 2011-11-30, B B1697-11, Court of Appeal (*Hovrätten för västra Sverige*) 2016-04-08, B-5017-15 and Court of Appeal (*Hovrätten för Nedre Norrland*) 2018-06-14, B1366-17.

<sup>1289</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2000171-om-forbud-betraffande-viss\\_sfs-2000-171](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2000171-om-forbud-betraffande-viss_sfs-2000-171).

#### 6.25.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

In Sweden, no case law was detected concerning the condition of “actual knowledge” of illegal activity or awareness of the hosting providers, as stipulated under Article 14 of the E-Commerce Directive.

#### 6.25.4.4. Notice and take-down requirements

No specific requirements have been specified for the notice and take-down procedure related to the copyright infringement of audiovisual sports content, according to the case law in Sweden.

#### 6.25.4.5. Removal and blocking orders

In Sweden, several cases are related to removal and blocking orders before the Swedish Patent and Market Court of Appeals (*Patent- och marknadsöverdomstolen: PMÖD*). None of these cases are about online infringement of sports content. This is not an exhaustive description of all cases on removal and blocking orders. This section only highlights a few cases.

In particular, with regard to interim injunctions:

- In the case PMÖ 9945-18 concerning an interim injunction pursuant to section 53b, second paragraph of the Copyright Act, the court rejected a number of film and music companies’ injunctions. The companies demanded that an internet provider be temporarily ordered to block their customers’ access to several domain names and web addresses, because it was possible to reach illegal copyright content. Even if the court had considered that there were grounds for copyright infringement and the internet provider – in light of the principle of participation – was guilty of participation, the court also found that at the current stage of the proceedings, there was no sufficient basis for any assessment of the extent to which copyright material was made available via the relevant web pages. Thus, the court considered that an interim injunction was not proportionate, and the companies’ claim was therefore rejected.<sup>1290</sup>

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<sup>1290</sup> <https://www.domstol.se/patent--och-marknadsoverdomstolen/patent--och-marknadsoverdomstolens-avgoranden/2019/59250/>



- In another case, PMÖ 7648-19, the court ruled that an internet provider, within the meaning of section 53b of the Copyright Act, had participated in copyright infringement by providing an internet connection to its subscribers who in this way gained access to film works that were illegally made available to the public by The Pirate Bay and three other sites. The Court of Appeal ordered an interim injunction and prohibited the internet provider from continuing to participate in copyright infringement and ordered it to prevent its subscribers from accessing the services via certain domain names and web addresses through technical blocking measures.<sup>1291</sup>

Moreover, regarding permanent injunctions:

- In a Swedish Patent and Market Court of Appeal case, PMÖD 2017:1, concerning an interim injunction under section 53b of the Copyright Act, a number of film and music companies claimed that an internet (access) provider, by giving its customers access to the services of The Pirate Bay and Swefilmer via the internet connection that the company provides, participates in copyright infringement.<sup>1292</sup> The companies had requested that the internet provider be prohibited from participating in the infringement and that an injunction be issued. The court stated that under the InfoSoc Directive, an injunction can be issued against an ISP whose services are used to commit copyright infringement, even if the ISP only provides an internet connection to its customers. The court also stated that the Swedish Copyright Act must be interpreted in the light of EU law and that this means that the Copyright Act must be interpreted in such a way that no participation – as intended by criminal law – is required for the court to decide on an injunction. Through a proportionality assessment, the court decided that the internet provider should be prohibited from participating in the infringement. The court issued an injunction which entailed the ISP to block its subscribers' access to the services of The Pirate Bay and Swefilmer via listed domain names and web addresses. The injunction was ordered for three years.

Finally, concerning dynamic injunctions in copyright cases:

- The Swedish Patent and Market Court of Appeal ruled in Case T-13399/19<sup>1293</sup> that an ISP participated in copyright infringement by providing an internet connection to its subscribers who in this way gained access to films and TV series that were illegally made available to the public by The Pirate Bay and three other services. After balancing the parties' interests, the Court of Appeal upheld and confirmed

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<sup>1291</sup><https://www.domstol.se/globalassets/filer/domstol/patentochmarknadsoverdomstolen/avgoranden/2019/pmo-7648-19.pdf>.

<sup>1292</sup> PMÖD, PMT 11706-15 (2017:1): <https://www.domstol.se/patent--och-marknadsoverdomstolen/patent--och-marknadsoverdomstolens-avgoranden/2017/59538/>.

<sup>1293</sup> <https://www.domstol.se/patent--och-marknadsoverdomstolen/patent--och-marknadsoverdomstolens-avgoranden/2020/77493/>.



the dynamic blocking injunction. The court required the ISP to block specific domain names and addresses, based on the fact that a blocking injunction, in order to be effective in the interest of rightsholders, should not be aimed solely at certain specified domain names and URLs, but should also target additional domain names and websites with the same purpose of providing access to the same services.

#### 6.25.4.6. Measures against end-users ordered by the courts

Measures against end-users have not been taken by the Swedish courts.

#### 6.25.4.7. Compensation criteria adopted by the courts

Article 54 of the Copyright Act imposes compensation (a hypothetical licence fee) for the use of a copyrighted work or other subject matter protected by related rights. It can be described as strict liability for the defendant to compensate for unlawful use. If the use was carried out intentionally or through negligence, the defendant could also be liable to pay further damages.

Supreme Court case NJA 2019 s. 3 clarified how the calculation for reasonable compensation for use should be made. It was a copyright case where persons had made 45 films illegally available to the public through streaming on the internet. The question in the case was how reasonable compensation should be calculated for a specific film. The plaintiffs requested SEK 9.9 million as compensation and SEK 1.2 million for lost profit. The Supreme Court stated that the infringer should not be better positioned than one who follows the law. If there is a licensing market or principles established for the setting of the fee, they shall be used. If there is no licensing market or established principles, the starting point when calculating the appropriate amount should be an imaginary agreement between the rightsholder and someone who wants to acquire the right to use the film in the same way as the defendant. However, this method can be complicated as it is based on what the parties would have agreed upon. If that is the case, it remains for the court to take into account the evidence submitted by the parties. The rightsholder is required to prove a reasonable price. The plaintiff should receive full compensation without being overcompensated. The court also stated that the question of whether compensation is reasonable or not is a legal assessment. The requirement for proof may vary depending on the circumstances. In some cases, it will be a reason to use the relief clause in Chapter 35, Article 5 of the Code of Judicial Procedure (*Rättegångsbalken (1942:740)*)<sup>1294</sup> The rule states that if full evidence cannot be obtained or only with difficulty, the court may estimate reasonable compensation. In this case, the

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<sup>1294</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattegangsbalk-1942740\\_sfs-1942-740](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattegangsbalk-1942740_sfs-1942-740).

court had to estimate the compensation as the evidence did not provide more specific direction. In an overall assessment, the court estimated the compensation at SEK 400 000.

Article 54 also contains rules on damages if the infringer acted intentionally or was negligent. The compensation for further damages can be given for non-economic harm, lost profit, profit made by the person who committed the infringement (unjust enrichment), harm to the work's reputation, non-pecuniary damage, and compensation for the rightsholders endeavours in preventing any infringement. These rules on damages in the Copyright Act are *lex specialis* to the *lex generalis* Tort Liability Act (*Skadeståndslagen (1972:207)*).<sup>1295</sup>

#### 6.25.4.8. Criminal sanctions ordered by the courts

In the case mentioned in section 6.25.4.1. above, the criminal sanction imposed in Supreme Court Case NJA 2015 s. 1097 consisted of day fines.

### 6.25.5. Reports and studies

From a non-legal perspective, there are several studies and reports about online piracy of protected content:

- “Intermediate responsibility on the internet: a report on the role and responsibilities of internet providers” (*Axhamn, Johan Mellanhandsansvar på internet, en rapport kring internetleverantörers roll och ansvar. Netopia, 2010*).<sup>1296</sup>
- “Global Online Piracy Study Legal Background Report” (João Pedro Quintais, 2018). In this report there is a questionnaire on Online Copyright Infringement and Enforcement in National Law in Sweden, written by Szkalej, Kacper.<sup>1297</sup>

There are no reports related to the specific issue of illegal online transmission of sports events or national studies or reports which focus on the technologies and business models used for the illegal streaming of sports content.

Regarding legal offers online, the Swedish Patent and Registration Office (PRV)<sup>1298</sup> has set up a portal (website)<sup>1299</sup> with information where a user can search for sites for sports events that provide access to legal offers online.

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<sup>1295</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/skadestandslag-1972207\\_sfs-1972-207](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/skadestandslag-1972207_sfs-1972-207).

<sup>1296</sup> [https://lup.lub.lu.se/search/ws/files/77245129/Mellanhandsansvar\\_p\\_internet.pdf](https://lup.lub.lu.se/search/ws/files/77245129/Mellanhandsansvar_p_internet.pdf).

<sup>1297</sup> <https://www.ivir.nl/publicaties/download/Global-Online-Piracy-Study-Legal-Background-Report.pdf>.

<sup>1298</sup> <https://www.prv.se/en/>.

<sup>1299</sup> [www.streamalagligt.se](http://www.streamalagligt.se).

The Swedish Government has given the PRV the task of raising awareness of illegal streaming and also changing attitudes towards it. The PRV has developed a series of campaigns designed to help it achieve these goals<sup>1300</sup>

There are no associations that actively work to address the issue of online piracy of audiovisual sports content.

However, there is one association (the Association of Swedish Advertisers) that has created recommendations for its members on how to avoid advertising on illegal streaming sites.<sup>1301</sup>

### 6.25.6. Data compilation

This country report is based on data compiled by Ulrika Wennersten, senior lecturer at Lund University.

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<sup>1300</sup> <https://www.prv.se/en/copyright/stream-legally/film-illegal-streaming-activities/>

<sup>1301</sup> <https://www.annons.se/kanns-det-ratt-att-finansiera-olagliga-sajter-ar-du-beredd-att-ta-smallen/>.



## 6.25.7. Annex

**Table 161. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive (98/84/EC)</b>	Act (2000:171) on prohibition regarding certain decoding equipment ( <i>Lag (2000/171) om förbud beträffande viss avkodningsutrustning</i> ) <sup>1302</sup>
<b>Article 5 Conditional Access Directive 98/84/EC – Infringing activities</b>	Article 6
<b>InfoSoc Directive (2001/29/EC)</b>	Copyright Act <sup>1303</sup>
<b>Article 6 InfoSoc – Obligations as to technological measures</b>	Article 52b-f
<b>Article 8 InfoSoc – Sanctions and remedies</b>	Article 53 – Article 53a – Article 53b
<b>IPRED (2004/48/EC)</b>	Chapter 7, Copyright Act
<b>Article 6 IPRED – Evidence and Article 7 IPRED – Measures for preserving evidence</b>	Measures already provided in national law
<b>Article 8 IPRED – Right of information</b>	Chapter 7 53c-53f §§ in the Copyright Act ( <i>Upphovsrättslagen 1960:729</i> )
<b>Article 9 IPRED – Provisional and precautionary measures</b>	Already provided in national law
<b>Article 10 IPRED – Corrective measures</b>	Chapter 7 Article 55 och 57 §§ Copyright Act ( <i>Upphovsrättslagen 1960:729</i> )
<b>Article 11 IPRED – Injunction</b>	Sweden already had rules on injunctions, on penalty of a fine in all IP legislation. These rules also include temporary (interim) injunctions. All the rules on injunctions in the different IP legislation have been changed in order to transpose the directive. The changes were designed to permit injunctions against participating persons. There was also a change to permit early injunctions against preparation and attempts to commit infringement.
<b>Article 12 IPRED – Alternative measures</b>	Already provided in national law. When transposing the directive, the rule was changed so that it is only applicable when the person has acted unintentionally and without negligence. The Article on Plant Breeders' Rights was also amended so that it is only applicable if there are special reasons.

<sup>1302</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2000171-om-forbud-betraffande-viss\\_sfs-2000-171](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2000171-om-forbud-betraffande-viss_sfs-2000-171).

<sup>1303</sup> <https://www.wipo.int/edocs/lexdocs/laws/en/se/se124en.pdf>.





EU directives	National law
<b>Article 13 IPRED – Damages</b>	Already provided in national law. All these provisions were amended to clarify the circumstances that must be taken into account when determining damages.
<b>E-Commerce Directive (2000/31/EC)</b>	Act (2002:562) on electronic commerce and other information society services ( <i>Lag (2002) om elektronisk handel och andra informationssamhällets tjänster</i> ) <sup>1304</sup> Act (1991:980) on trade with financial instruments ( <i>Lagen handel med finansiella instrument</i> ) <sup>1305</sup> Consumer Credit Act (1992:830) ( <i>Konsumentkreditlagen</i> ) <sup>1306</sup> Marketing Act ( <i>Marknadsföringslagen</i> ) (2008/486)
<b>Article 12-15 E-Commerce Directive – Liability of intermediary service providers</b>	Article 16-18 Act (2002: 562) on electronic commerce and other information society services ( <i>Lag (2002) om elektronisk handel och andra informationsamhällets tjänster</i> )
<b>Article 17 E-Commerce Directive – Out-of-court dispute settlement</b>	No new legislative measures
<b>Art 20 E-Commerce Directive – Sanctions</b>	Article 19 of the Act 2002/562 and Article 24 of the Marketing Act ( <i>Marknadsföringslagen (2008:486)</i> )
<b>DSM Directive EU (2019/790)</b>	Not yet transposed (as at October 2021)

<sup>1304</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2002562-om-elektronisk-handel-och-andra\\_sfs-2002-562](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2002562-om-elektronisk-handel-och-andra_sfs-2002-562).

<sup>1305</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1991980-om-handel-med-finansiella\\_sfs-1991-980](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1991980-om-handel-med-finansiella_sfs-1991-980).

<sup>1306</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/konsumentkreditlag-1992830\\_sfs-1992-830](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/konsumentkreditlag-1992830_sfs-1992-830).

## 6.26.SI – Slovenia – National legal summary<sup>1307</sup>

### 6.26.1. General legal framework

#### 6.26.1.1. National legislation on copyright<sup>1308</sup>

In Slovenia, several laws regulate the scope and the enforcement of copyright and related rights, as follows:

- Copyright and Related Rights Act (Official Gazette of the Republic of Slovenia, No. 16/2007, No. 68/2008, No. 110/2013, No. 56/2015 and No. 63/16 – ZKUASP, 9/19) (*Zakon o avtorski in sorodnih pravicah* – the Copyright Act)<sup>1309</sup>
- Decree on amounts of remuneration for private and other internal reproduction No. 103/2006<sup>1310</sup>
- The Collective Management of Copyright and Related Rights Act (Official Gazette of the Republic of Slovenia, No. 63/2016 and No. 203/2020 – ZIUPOPDVE) (*Zakon o kolektivnem upravljanju avtorske in sorodnih pravic*)<sup>1311</sup>
- Decree on mediation in disputes concerning copyright and related rights (Official Gazette of the Republic of Slovenia, No. 56/2017)<sup>1312</sup>
- Decision determining the list of mediators (Official Gazette of the Republic of Slovenia, No. 82/2005, No. 36/2007 and No. 56/2017)<sup>1313</sup>
- Decision on the completion of the list of mediators (Official Gazette of the Republic of Slovenia, No. 36/2007).<sup>1314</sup>

<sup>1307</sup> The country report on Slovenia incorporates the feedback received from Tanja Sarić (Intellectual Property Office) during the checking round with the national competent institutions.

<sup>1308</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>1309</sup> <http://www.uil-sipo.si/sipo/addition/resources/legislation/legislation-slovenia/>.

<sup>1310</sup> The Decree on amounts of remuneration for private and other internal reproduction ceased to be in force on the day the Collective Management of Copyright and Related Rights Act entered into force (22 October 2016), but it still applies until entry into force of the provisional tariff referred to in Article 85 of the aforementioned Act: <http://www.uil-sipo.si/sipo/addition/resources/legislation/legislation-slovenia/>.

<sup>1311</sup> <http://www.zis.gov.rs>; <https://wipo.lex.wipo.int/en/legislation/details/3702> (English translation available)

<sup>1312</sup> <http://www.uil-sipo.si/uil/dodatno/koristni-viri/zakonodaja/predpisi-rs/>.

<sup>1313</sup> <http://www.uil-sipo.si/uil/dodatno/koristni-viri/zakonodaja/predpisi-rs/>.

<sup>1314</sup> <http://www.uil-sipo.si/uil/dodatno/koristni-viri/zakonodaja/predpisi-rs/>.

Copyright infringement is considered both a criminal offence (Articles 147-149 of the Criminal Code (*Kazenski zakonik RS – KZ-1*)) and a civil law violation (Article 164 of the Copyright Act).

Furthermore, there is a differentiation of crimes based on acting for profit: no administrative fines are applicable in these cases but the penalty is much higher if the crime is committed for profit. The Criminal Code distinguishes between the “high market value” of the infringed copyrighted works, their “very high market value”, and whether very large proceeds have been gained unlawfully with intention to secure a pecuniary benefit.

### 6.26.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>1315</sup> has not been transposed to date (as at October 2021).

**Table 162. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	N/A
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	Copyright and Related Rights Act No. 56/2015 ( <i>Zakon o avtorski in sorodnih pravicah</i> )
<b>Information Society (InfoSoc) Directive</b>	Copyright and Related Rights Act No. 56/2015
<b>E-Commerce Directive</b>	Consumer Protection Act No. 20/98 CPA ( <i>Zakon o varstvu potrošnikov (ZVPot)</i> ); Consumer Protection Act No. 31/08 CPA-1 ( <i>Zakon o varstvu potrošnikov (ZVPot-1)</i> ); Act Amending the Consumer Protection Act No. 110/02 ( <i>Zakon o spremembah in dopolnitvah zakona o varstvu potrošnikov (Uradni list RS, št.)</i> )  Electronic Commerce Market Act No. 61/06 -ECA ( <i>Zakon o elektronskem poslovanju na trgu (Ur.l. RS št. 61/06 - ZEPT)</i> )
<b>Conditional Access Directive</b>	Act on Conditional Access to Protected Electronic Services No. 43/04 ( <i>Zakon o pogojnem dostopu do zaščiteneh elektronskih storitev</i> )

Source: Slovenian response to European Audiovisual Observatory standardised survey

<sup>1315</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

## 6.26.2. National rules applicable to audiovisual sports content

### 6.26.2.1. Legal definitions of “broadcaster” and “sports event organiser”

A definition of “broadcaster” is provided by Article 3 sub-paragraph 7 of the Audiovisual Media Services Act,<sup>1316</sup> as follows:

*Television broadcaster means a natural or legal person that is registered to carry out television programming and broadcasting activities pursuant to and in accordance with authorisation as laid down in the Act governing the mass media. “Broadcaster” means a provider of audiovisual media services that provides audiovisual programmes for simultaneous viewing on the basis of a listing.*

Furthermore, Article 3(1) sub-paragraph 6 of the Digital Broadcasting Act (*Zakon o digitalni radiodifuziji – ZDRad*),<sup>1317</sup> refers to a digital broadcaster as follows:

*Operator of a multiplex system shall mean a natural or legal person that manages or intends to manage a multiplex system and public communications network for digital broadcasting and that has notified the Post and Electronic Communications Agency of the Republic of Slovenia (hereinafter: Agency) of this pursuant to the provisions of the act governing electronic communications.*

There is no explicit definition of sports events organiser in Slovenian law. However, Articles 9, 10 and 11 of the Public Assembly Act (*Zakon o javnem zbiranju – ZJZ*)<sup>1318</sup> provide for the general measures to be carried out by organisers of assemblies and events, including owners or administrators of sports buildings and by organisers of sports events in such buildings to ensure order, the safety of the participants and other persons, and the protection of the property at such events.

### 6.26.2.2. Legal protection related to sports events

Sports event organisers hold the right to permit (or prohibit) the making of audiovisual recordings of the sports event, based on their right to regulate the presence of the public at the sports event venue. In practice, sports event organisers receive from the relevant league or federation concerned, on a contractual or self-regulatory basis, the so-called “stadium right” (or “house” right or “domiciliary” right) for the sports activity in question. On the basis of these rights, they may, for example, rely on contractual obligations to prohibit visitors to the venue from webcasting or otherwise recording the sports event.

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<sup>1316</sup> <http://www.pisrs.si/Pis.web/cm?idStrani=prevodi>.

<sup>1317</sup> Ibid.

<sup>1318</sup> Ibid.



Subsequently, any infringement of this obligation would be treated as a contract violation, i.e. outside of copyright law.

Sports event organisers may also permit a broadcaster to broadcast the event, by means of a contract. The contract allows the parties to agree on what can be broadcast, how, where, for how long and on the monetary compensation. There are no special legal provisions for such contracts; therefore, only the general rules of civil law and the Obligations Code (*Obligacijski zakonik – OZ*)<sup>1319</sup> will matter. In a way, the broadcaster buys permission from the organiser to broadcast the event. Without the permission, a broadcaster cannot broadcast the sports event. However, it can still prepare a short reportage (up to 90 seconds), if the event is in the public interest (a major event). This right of broadcasters is defined in Article 74 of the Mass Media Act (*Zakon o medijih*).<sup>1320</sup>

Furthermore, if a sports event is recorded, the producer of the audiovisual recording holds the related (or “neighbouring”) rights in the videogram, i.e. the exclusive rights to reproduce, distribute, rent, communicate and make available the videogram to the public (Article 134 of the Copyright Act). If the event is broadcast, the broadcaster also holds the related rights in the broadcast, i.e. the exclusive right to rebroadcast its broadcast; to broadcast it as a “secondary broadcast” if such communication is made in places accessible to the public against payment of an admission; to fix its broadcast; to reproduce and distribute the fixations of its broadcast; to make available the broadcast to the public (Article 137 of the Copyright Act).

In practice, in Slovenia, the rights to the audiovisual recording and broadcast of sports events belong to the licensee on Slovenian territory. The licensees of the rights for the Slovenian territory are usually Slovenian television broadcasters who broadcast the licensed content in their television programmes. The holder of the licence for the right to broadcast a sports event in a certain geographical area has the exclusive right to be the only one to broadcast that event in its programme(s) and to oblige TV operators or service providers to restrict all other (generally foreign) TV programmes, which broadcast the same event in another country or which have the rights to broadcast that event in another country.

Rightsholders are entitled to take legal action in the case of infringement of their rights; in practice these will be the broadcasters.

### 6.26.2.3. Other specific rules applicable to sports events

There is no other specific legal protection for sports events in Slovenia. In addition, there are no specific rules regarding the use of sports content in social media in Slovenia.

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<sup>1319</sup> <https://wipolex.wipo.int/zh/text/473403>.

<sup>1320</sup> Suzana Kraljić, Miha Šepec & Katja Drnovšek: Developments of sports law in the Republic of Slovenia, *Zbornik radova Pravnog fakulteta u Splitu, god. 57, 2/2020, str. 287-304*: <https://hrcaak.srce.hr/file/345421>.



**Table 163. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
Broadcaster	Yes	Related rights
Sports event organiser	No	“Stadium” rights

*Source: Slovenian response to European Audiovisual Observatory standardised survey*

## 6.26.3. Remedies and sanctions applicable in the event of infringement

### 6.26.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content. Sanctions, remedies and injunctions regulated by the Copyright Act are only applicable in cases of copyright infringement and, therefore, legal protection is only granted to intellectual creations that meet the requirements of copyright works or other subject matter protected by related rights.

There are no specific measures available for online piracy of audiovisual sports content and therefore the general rules apply. As regards civil law, the District Court in Ljubljana has exclusive jurisdiction over disputes related to intellectual property (IP) rights. The rightsholder may refer to this court claims regulated in Article 167 (claims), Article 179 (interim measures), Article 171 (preservation of evidence), Article 172 (duty to inform), Article 173 (submission of evidence) of the Copyright Act and in Article 67 (appeal procedure) of the Collective Management of Copyright and Related Rights Act. The court decides on the basis of the legislation on individual IP rights and other civil regulations (e.g. the Code of Obligations, the Civil Procedure Act, the Enforcement and Insurance Act).

In terms of available claims, when the exclusive rights granted by the Copyright Act are infringed, the rightsholder may request the court that the infringement already commenced and future infringements be prohibited; the objects of infringement be recalled from the channel of commerce, taking account of the interests of bona fide third parties; the situation caused by the infringement be rectified; the objects of infringement be irrevocably removed from the channels of commerce; the objects of infringement or the means of infringement that are owned by the infringer and intended or used exclusively or principally for infringement be destroyed; the objects of infringement be surrendered to the rightsholder against the reimbursement of the costs of their production; and that the judgment be published.

In deciding on removal claims, the court shall take into account all the circumstances of the case, in particular the proportionality between the gravity of the infringement and the claim and the rightsholder's interest in ensuring effective



protection. Article 167(3) of the Copyright Act specifies that in proceedings against a person whose services have been used to infringe the rights in question, and where the existence of such an infringement has already been finally established in proceedings against the third party, the infringement shall be presumed to exist.

Infringements of rights under the Copyright Act shall be subject to the general rules on compensation for damages and civil punishment, pursuant to Article 168 et seq. of the Copyright Act. If a right was infringed intentionally or by gross negligence, the rightsholder may claim the payment of agreed or customary royalties or remuneration for such use, increased by up to 200%, irrespective of whether he/she suffered actual pecuniary damage because of the infringement.

Procedurally, the rightsholder may also ask for provisional (or “interim”) measures, based on Article 170 of the Copyright Act, to secure non-monetary claims if the rightsholder shows probable grounds for belief that (1) he/she is the rightsholder, and (2) his/her right has been infringed or there exists an actual danger to be infringed. The rightsholder shall also show probable grounds for belief that (1) a danger exists that the enforcement of claims will be made impossible or difficult; and (2) the adoption of a provisional measure is necessary to avoid damage that will be difficult to repair; or (3) a provisional measure, which may prove unfounded in the course of the proceedings, will not have more detrimental consequences for the alleged infringer than the non-adoption of such measures would have had for the rightsholder.

Concerning the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive), Articles 166, 166 (a), (b), and (c) of the Copyright Act include, within the infringements of exclusive rights, the unlawful removal or alteration of any electronic rights management data; the unlawful reproduction, distribution, importation for distribution, rental or communication to the public of a copyright work or subject matter protected by related rights in respect of which the electronic rights management data has been illegally removed or altered; the production, importation, distribution, advertising, manufacture, etc. of technical measures aimed at enabling or facilitating the circumvention of actual technical measures.

Sanctions and remedies are put in place in Articles 5 to 8 of the Act on Conditional Access to Protected Electronic Services (manufacture, importation, distribution, installation, advertising, etc. of prohibited devices), which can be directly invoked and applied in cases of online piracy of audiovisual sports content. These include inspections and administrative measures; a specific action for infringement of the protected rights by conditional access (Article 6 of the Act); interim injunctions (Article 7 thereof); and criminal provisions. In particular, a service provider, whose right has been infringed, may request the following from the competent court: a prohibition to prevent the infringer from committing future infringements; an order to eliminate the consequences of the prohibited act, or to destroy or disable the prohibited devices, if the consequences of the prohibited act cannot be eliminated otherwise; alternatively, the service provider may request the delivery of the prohibited devices against compensation; an order to destroy advertisements intended to promote the sale or use of prohibited devices; alternatively,



the service provider may demand payment for its protected service in the amount of twice its price. In addition, the court shall issue an interim injunction at the request of the rightsholder if the latter submits evidence that his/her rights have been violated or that such violation is probable and if he/she requests the interim injunction within three months of learning of the alleged infringement. A fine of at least EUR 4 172.92 shall be imposed on a legal person and sole proprietor who manufactures, imports, distributes, sells, leases or possesses prohibited devices for the purpose of obtaining material gain.

#### 6.26.3.2. National bodies with competences on copyright enforcement

In Slovenia, there is no national authority other than the courts with specific competences to address copyright infringements.

#### 6.26.3.3. Codes of conduct and Memorandums of Understanding

There are no codes of conduct or memorandums of understanding related to the enforcement of IP rights in Slovenia.

#### 6.26.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

The regime of liability of internet intermediaries as set out in the E-Commerce Directive is transposed into Slovenian law in Chapter 2 of the Electronic Commerce Market Act (ECMA).<sup>1321</sup> In line with the directive, the ECMA distinguishes between three types of Internet Service Providers (ISPs) : mere conduit, caching and hosting. The main principle is that ISPs are under no general obligation to monitor the information which they transmit or store, nor actively to seek facts or circumstances indicating illegal activity. Under the notice and take-down system, they must act only when they are aware of the illegal content hosted or when the injured party informs them about the violation. The ECMA reproduces, more or less verbatim, the provisions of the directive, but provides little additional guidance on issues not defined in the directive. For example, the law does not specify the circumstances in which an ISP should be considered to be aware of an illegal activity or content.

Article 11 of the ECMA provides that a service provider is exempt from liability if it acts immediately after obtaining knowledge of the illegal activity or content to remove or to disable access to it. The law does not define the standard of immediacy, so it is not clear whether the service provider must act instantly after receiving a take-down notice or

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<sup>1321</sup> *Zakon o elektronskem poslovanju na trgu* (ZEPT), Official Gazette of RS, No. 61/06, with further amendments.





whether it can take appropriate time to check the facts and obtain a legal opinion in cases where the illegality of content is not evident at first sight. The law also does not specify the form of a take-down notice which obliges a service provider to act. Furthermore, it is unclear whether the request can be anonymous or whether the sender should identify him/herself as the rightsholder and specify the rights that the contested content allegedly infringes. The existing case law under the ECMA has not yet addressed these issues.<sup>1322</sup>

#### 6.26.3.5. Removal and blocking orders

As mentioned before, in the case of infringement of his/her rights, the rightsholder may bring to the court several claims, including that the object of infringement be recalled from the channels of commerce (Article 167 Copyright Act). In addition, he/she may also request a provisional (or “interim”) measure, based on Article 170 of the Copyright Act, to secure non-monetary claims if his/her right has been infringed or there exists an actual danger of infringement; or if there is a danger that the enforcement of claims will be made impossible or difficult. The rightsholder may also request a provisional measure if such a measure is necessary to avoid damage that will be difficult to repair, or if a provisional measure, which may prove unfounded in the course of the proceedings, does not have more detrimental consequences for the alleged infringer than the non-adoption of such a measure would have had for the rightsholder.

Furthermore, Articles 9 to 11 of the ECMA provide for the possibility for courts to impose on service providers orders to terminate or prevent an infringement. Notwithstanding the exemption from liability of the service provider, the court may order the removal of the illegal content or the disabling of access to it due to the detection and prevention of criminal offences, the protection of privacy, the protection of classified information and business confidentiality.

On the other hand, according to Article 18 of the ECMA, anyone who considers that a service provider has violated any of his/her rights, may request before the competent court the issuance of an interim injunction. The court may, in particular, prohibit threatened infringements or the continuation of ongoing infringements; restrict the provision of information society services by requiring service providers to remove or disable access to the information stored.

The court may also issue an interim injunction without hearing the opposing party if the proposer proves as plausible that any delay to an interim injunction would make it impossible to achieve its purpose or cause possibly irreparable damage to the applicant. The court shall immediately notify the counterparty of the interim injunction, but no later than upon enforcement of the interim injunction. In issuing an interim injunction, the court shall set a deadline for the proposer to bring an action (within 30 days from the

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<sup>1322</sup> See M. Damjan, “Odgovornost ponudnikov storitev informacijske družbe in spletnih medijev za uporabniške vsebine”, *Pravosodni bilten*, 2017, vol. 38, no. 1, pp. 153-177.



notification of the injunction). This procedure applies equally in the case of online infringement of audiovisual sports content.

#### 6.26.3.6. Measures against end-users

Suspending and blocking internet access may in principle be applied against end-users. However, no case law has been identified in that respect. Furthermore, it is to be noted that Slovenian law is very strict in relation to the type of data that may be collected and processed from users for identification purposes, as well as in relation to the obtaining of consent.

#### 6.26.3.7. Criminal sanctions

As regards criminal sanctions, these fall within the jurisdiction of the police, the public prosecutor's office and the locally competent district courts, when infringement of IP rights constitutes a criminal offence. There are no specific provisions on criminal proceedings in the case of online piracy of audiovisual sports content in Slovenia. The Criminal Code of the Republic of Slovenia (KZ-1) sanctions criminal actions concerning the infringement of copyright and related rights under Articles 147 (infringement of moral copyright), 148 (infringement of material copyright) and 149 (infringement of copyright related rights).

In particular, the infringement of moral copyright (i.e. the publication, presentation, performance or transmission of the work of another author under the infringer's name) shall be punished by a fine or imprisonment of up to one year. The infringement of material copyright (i.e. the illegal use of copyrighted works or copies with a high total market value) shall be sanctioned by a prison sentence of up to three years (up to five years in the case of very high total market value and between one and eight years if very large proceeds have been gained unlawfully and there is intention to generate profit). The infringement of related rights (i.e. the reproduction, making available to the public, distribution, leasing of one or more performances, phonograms, video recordings, radio or television broadcasts or databases with a high total market value) shall be punishable by imprisonment of up to three years (up to five years in the case of very high total market value, and between one and eight years if very large proceeds have been gained unlawfully and there is intention to generate profit).

Furthermore, Article 164 of the Copyright Act regarding civil law violations provides that the person whose rights have been infringed (the beneficiary) may request protection of the rights and compensation of damages against the infringer in accordance with the rules on damage, unless otherwise provided by the Act. The same protection may be requested by the beneficiary when there is a real danger that his/her rights will be infringed.

Except in the case of a criminal offence of moral rights infringement, where the prosecution of the perpetrator of the criminal offence begins at the request of the injured

party, the proceedings in respect of said criminal offences shall be *ex officio*. The rightsholder may file a criminal complaint with the police or the public prosecutor's office.

There are also administrative measures which are carried out by the Financial Administration of the Republic of Slovenia and the Market Inspectorate of the Republic of Slovenia.

**Table 164. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial bodies)	No
Entitlement to take legal action	Yes, rightsholders (usually the broadcaster)
Codes of conduct	No
Specific proceedings	No
Specific remedies	No

*Source: Slovenian response to European Audiovisual Observatory standardised survey*

**Table 165. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	Yes
Removal and blocking injunctions	Yes
Dynamic and/or live blocking injunctions	Not mentioned in national law; never applied
De-indexing injunctions	Not mentioned in national law; never applied
Damages and orders to cease and desist	Yes
Administrative offence and remedies	Yes
Notice and take-down procedures	N/A



Source: Slovenian response to European Audiovisual Observatory standardised survey

## 6.26.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions, in relation to online infringement of audiovisual sports content.<sup>1323</sup>

**Table 166. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
<b>Communication to the public</b>	N/A	N/A
<b>Hosting providers' knowledge and awareness of illegal activity</b>	<p>A hosting service provider was obliged to take down the illegal content only after having been notified of the specific violation by the affected party.</p> <p>The administrator of an online forum was not obliged to check the truth of all posts, but had to react to the notification received and remove any offensive or illegal messages.</p> <p>After receiving the notification, the service provider must take action immediately and not wait until the unlawfulness has been established by a court order or a judgment.</p>	<p>Judgement of the High Court in Ljubljana: ECLI:SI:VSLJ:2012:I.CP.3037.2011</p> <p>Order of the same court: ECLI:SI:VSLJ:2013:I.CPG.862.2013</p> <p>Judgment of the High Court in Ljubljana: ECLI:SI:VSLJ:2017:I.CP.3097.2016</p> <p>Judgment of the High Court in Ljubljana: ECLI:SI:VSLJ:2014:I.CP.252.2014</p>
<b>Notice and take-downs</b>	Disregarding a take-down request does not make the service provider automatically liable for the disputed content, but merely rescinds its immunity from any claims,	Judgment of the High Court in Ljubljana: ECLI:SI:VSLJ:2017:I.CP.289.2017

<sup>1323</sup> The case law mentioned in this table is not specifically related to the infringement of audiovisual sports events. Furthermore, judgments Nos. I Cp 3037/2011, I Cpg 862/2013, I Cp 3097/2016, I Cp 252/2014 and I Cp 289/2017 are not related to IP infringements, as they are related to Article 11 and Article 18 of the Electronic Commerce Market Act in relation to reputational damage and violation of personality rights.



Content	Substance of the decision	Decisions
	whereas the merit of such claims must still be assessed under the general rules of civil or criminal law.  The courts have issued an injunction against an ISP for the removal of a blog post violating a person's reputation and good name.	Order of the High Court in Koper: ECLI:SI:VSKP:2017:CPG.15.2017
<b>Measures against end-users</b>	N/A	N/A
<b>Criminal sanctions</b>	N/A	N/A

Source: Slovenian response to European Audiovisual Observatory standardised survey

#### 6.26.4.1. Communication to the public

There are no cases related to the notion of communication to the public and copyright infringement of audiovisual sports content.

#### 6.26.4.2. Online infringement of audiovisual sports content

One landmark case has been detected in Slovenia in relation to piracy of audiovisual sports content, namely *EUROSPORT SALES ORGANIZATION v. SA.TE.ING.d.o.o.* In this case, EUROSPORT sued SA.TE.ING., a sports piracy enterprise in Slovenia. At the time, the District court of Ljubljana issued a decision on a temporary injunction for the first time for copyright infringement, without hearing the other party.<sup>1324</sup> The court ordered that all the devices used to carry out this illegal activity be seized from the defendant and ordered him to pay a total fine in the amount of DEM 80 592.93/SIT 4 713 114.00.

#### 6.26.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

As previously indicated, the ECMA reproduces, more or less verbatim, the provisions of the E-Commerce Directive, but provides little additional guidance on the

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<sup>1324</sup> Conclusion 8 (pp. 93/98) of decision taken on 19 March 1998. This case was not published and this information is provided by the Authors Agency of Slovenia ("AAS").



circumstances in which intermediary service providers should be considered aware of an unlawful activity or information.

Courts generally consider that the ISP has actual knowledge of the illegal activity after receiving a notice and when it has not done anything technically possible to prevent further access to the illegal content. If the ISP becomes aware of the illegality of the content and acts on the notification of the illegality of the content, either by removing the content or by disabling access, it is not automatically and without legal process liable for that content.

In particular, Slovenian courts have held that a hosting service provider was obliged to take down the illegal content only after having been notified of the specific violation by the affected party.<sup>1325</sup> The administrator of an online forum was not obliged to check the truth of all posts, but had to react to the received notification and remove any offensive and illegal messages.<sup>1326</sup> However, after the notification, the ISP must take action immediately and not wait until the unlawfulness has been established by a court order or a judgment.<sup>1327</sup>

#### 6.26.4.4. Notice and take-down requirements

There are no precedents on notice and take-down requirements.

With regard to the legal grounds for an ISP's liability, the High Court in Ljubljana held that disregarding a take-down request does not make the ISP automatically liable for the disputed content, but merely rescinds their immunity from any claims, whereas the merit of such claims must still be assessed under the general rules of civil or criminal law.<sup>1328</sup>

No cases are reported where Slovenian courts have applied the test of a technically neutral ISP, devised by the Court of Justice of the European Union (CJEU) in *Google France v. Louis Vuitton*<sup>1329</sup> and *L'Oréal v. eBay*. However, the existing national case law does not in any way contradict this test.

#### 6.26.4.5. Removal and blocking orders

As previously mentioned, according to Articles 9 to 11 of the ECMA, a court may order the service provider to stop or prevent an infringement. The court may order the removal of or

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<sup>1325</sup> Judgement of the High Court in Ljubljana: ECLI:SI:VSLJ:2012:I.CP.3037.2011; order of the same court, ECLI:SI:VSLJ:2013:I.CPG.862.2013.

<sup>1326</sup> Judgment of the High Court in Ljubljana: ECLI:SI:VSLJ:2017:I.CP.3097.2016.

<sup>1327</sup> Judgment of the High Court in Ljubljana: ECLI:SI:VSLJ:2014:I.CP.252.2014.

<sup>1328</sup> Judgment of the High Court in Ljubljana: ECLI:SI:VSLJ:2017:I.CP.289.2017.

<sup>1329</sup> "In order to establish whether the liability of a referencing service provider may be limited under Article 14 of Directive 2000/31, it is necessary to examine whether the role played by that service provider is neutral in the sense that its conduct is merely technical, automatic and passive, pointing to a lack of knowledge or control of the data which it stores."



disabling of access to illegal content for the purpose of detecting and preventing criminal offences, the protection of privacy, or the protection of classified information or business secrecy. Article 18 of the ECMA further provides that anyone who believes that the service provider is in breach of their rights may request the competent court to issue an injunction ordering the service provider to remove or disable access to the infringing information.

So far, removal and blocking injunctions have not been used for audiovisual sports content in Slovenia.

#### 6.26.4.6. Measures against end-users ordered by the courts

No case law was identified regarding measures taken against end-users in cases of copyright infringement.

#### 6.26.4.7. Compensation criteria adopted by the courts

As mentioned previously, Article 164 of the Copyright Act provides that the rightsholder may claim damages against the infringer where his/her rights have been infringed, or where there is a real risk that they will be infringed. Furthermore, Articles 168 and 169 of the Copyright Act provide that the infringer is obliged to pay compensation to the rightsholder to the extent determined by the general rules on compensation for damages, or to the extent of the agreed or usual fee or compensation for a lawful use of the same type. If the copyright or related rights have been infringed intentionally or by gross negligence, the rightsholder may demand payment of the agreed or usual fee or compensation for such use, increased by 200%, regardless of whether he/she has suffered any material damage.

When deciding on a request for payment of a civil penalty and assessment of its amount, the court considers all the circumstances of the case, in particular the degree of guilt of the offender, the amount of the agreed or usual fee or compensation and the preventive purpose of the civil penalty.

#### 6.26.4.8. Criminal sanctions ordered by the courts

There are no cases in which courts have ordered criminal sanctions.

### 6.26.5. Reports and studies

From a non-legal perspective, there are certain relevant reports and studies about online piracy of protected content in Slovenia:



- Dr Peter Jeras, “Factors of online piracy”, 2019<sup>1330</sup>
- Dr Stamejic, Gregor, “Pirates of the online oceans” 2019<sup>1331</sup>
- Dr Sergej Iskra, Viktorija Florjančič, “Prevalence of piracy Software among students”, 2018<sup>1332</sup>
- Faculty of Economy at the University of Libjuana, “Analysis of perceived risk factors for digital piracy” (*Analiza zaznanih dejavnikov tveganja digitalnega piratstva*), 2016<sup>1333</sup>
- Dr Tina Šalamun, “Ethical Dilemmas Of Web Piracy”, 2016<sup>1334</sup>
- Dr Primož Petek, “People’s awareness of online piracy”, 2015<sup>1335</sup>

However, these reports do not consider the specific issue of illegal online transmission of sports events.

There are no reliable sources on technologies and business models used for the illegal streaming of sports content and no specific studies have been detected describing the legal offer of online sports content.

With regard to awareness campaigns related to online piracy, the most relevant campaigns are led by the collective organisation AIPA.<sup>1336</sup>

The information website called “Originalen.Si – Counterfeit and Piracy Information Website” aims to raise awareness of internet piracy and websites with illegal content. Among other content, the site also provides visitors with a direct link to the European Commission’s Staff Working Document Counterfeit and Piracy Watch List.<sup>1337</sup>

Finally, regarding associations of broadcasters or rightsholders which actively work to address the issue of online piracy of audiovisual sports content in Slovenia, the only active association is the BSA (the Software Alliance), which aims to reduce the level of piracy (fighting against the use of non-licensed software).

## 6.26.6. Data compilation

This country report is based on data compiled by Ingrid Kovsca Pušenjak, director at the Copyright Law Institute of Ljubjana, Slovenia.

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<sup>1330</sup> <https://dk.um.si/Iskanje.php?type=napredno&lang=slv&stl0=KljucneBesede&niz0=spletno+piratstvo>.

<sup>1331</sup> <https://plus.si.cobiss.net/opac7/bib/4842440>.

<sup>1332</sup> <https://www.hippocampus.si/ISBN/978-961-7023-84-8.pdf>.

<sup>1333</sup> <http://www.cek.ef.uni-lj.si/magister/talar4738.pdf>.

<sup>1334</sup> <https://plus.si.cobiss.net/opac7/bib/12225308>.

<sup>1335</sup> <https://dk.um.si/lzpisGradiva.php?id=55505&lang=slv>

<sup>1336</sup> <http://www.aipa.com/>.

<sup>1337</sup> [https://trade.ec.europa.eu/doclib/docs/2020/december/tradoc\\_159183.pdf](https://trade.ec.europa.eu/doclib/docs/2020/december/tradoc_159183.pdf).



## 6.26.7. Annex

**Table 167. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive (98/84/EC)</b>	Conditional Access to Protected Electronic Services ( <i>Zakon o pogojnem dostopu do zaščiteneh elektronskih storitev</i> )
<b>Article 5 Conditional Access Directive 98/84/EC – Infringing activities</b>	Article 4 – prohibited actions; Article 6 – action for infringement of the rights of protection by conditional access
<b>InfoSoc Directive (2001/29/EC)</b>	Copyright Act ( <i>Zakon o avtorski in sorodnih pravicah</i> )
<b>Article 6 InfoSoc – Obligations as to technological measures</b>	Article 166 - 166 a to c - Article 167
<b>Article 8 InfoSoc – Sanctions and remedies</b>	Articles 167, 168, 170
<b>IPRED (2004/48/EC)</b>	Copyright Act (No 56/2015), Articles 111-124 c
<b>Articles 6-7 IPRED – Preservation of evidence</b>	Articles 167-171 and 173 of the Copyright Act
<b>Article 8 IPRED – Right of information</b>	Article 172 of the Copyright Act
<b>Article 9 IPRED – Provisional and precautionary measures</b>	Articles 167 and 170 of the Copyright Act
<b>Article 10 IPRED – Corrective measures</b>	Article 167 of the Copyright Act
<b>Article 11 IPRED – Injunctions</b>	Articles 167 and 168 of the Copyright Act
<b>Article 12 IPRED – Alternative measures</b>	Article 172 of the Copyright Act
<b>Article 13 IPRED – Damages</b>	Articles 168 and 169 of the Copyright Act
<b>E-Commerce Directive (2000/31/EC)</b>	Consumer Protection Act No. 20/98 – CPA/ <i>Zakon o varstvu potrošnikov (ZVPot)</i> , as amended by the Consumer Protection Act (31/08) CPA-1 ( <i>ZVPot-1</i> ) and the Act Amending the Consumer Protection Act (No. 110/02) ( <i>Uradni list RS, št. 110/02</i> )  Electronic Commerce Market Act (e No. 61/06 -ECA) / <i>Zakon o elektronskem poslovanju na trgu (Ur.l. RS št. 61/06 - ZEPT)</i>  Electronic Business and Electronic Signature Act – ZEPEP (No. 57/00 of 23 June 2000) ( <i>Zakon o elektronskem poslovanju in elektronskem podpisu</i> )
<b>Articles 12-15 E-Commerce Directive – Liability of intermediary service providers</b>	Articles 8-11
<b>Article 17 E-Commerce Directive – Out-of-court dispute settlement</b>	Article 19



EU directives	National law
Article 20 E-Commerce Directive – Sanctions	Article 20
DSM Directive (EU 2019/790)	Not transposed (as at October 2021)

## 6.27.SK – Slovakia – National legal summary<sup>1338</sup>

### 6.27.1. General legal framework

#### 6.27.1.1. National legislation on copyright<sup>1339</sup>

In Slovakia, the Copyright Act (Act No. 185/2015 – *Zákon č. 185/2015 Z. z. Autorský zákon*) is the general act that regulates the scope and the enforcement of copyright and related rights.<sup>1340</sup> In addition, the Civil Code (Act No. 40/1964) also provides for the enforcement of copyright and related rights.

In Slovakia, copyright infringement is considered both as a civil law violation and as a criminal offence. Slovak law differentiates crimes depending on acting for profit – “unlawful use” – in combination with the criterion of damage caused to the rightsholder. Under Article 56 of the Criminal Act (Act No. 300/2005), the court may impose a fine of between EUR 160 and EUR 331 930 on any infringer who has committed an intentional crime in order to obtain or attempt to obtain a property benefit. A prison sentence may also be imposed for an intentional crime. According to Article 283 paragraph 1 of the Criminal Act the basis of the crime related to infringement of copyright states that any person who unlawfully infringes the protected rights to the work, performance, phonogram or audiovisual recording, radio or television broadcasting or database shall be liable to a term of imprisonment of up to two years. In the case of more serious infringement the length of imprisonment is set depending on the damage caused, with a maximum of eight years.

#### 6.27.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to enforcement of copyright and related rights into national law, as reported in the table below.

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<sup>1338</sup> The country report on Slovakia incorporates the feedback received from Jakub Slovák (Copyright Unit, Ministry of Culture) during the checking round with the national competent institutions.

<sup>1339</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>1340</sup> <https://www.zakonypreludi.sk/zz/2015-185>



Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>1341</sup> has not been transposed to date (as at October 2021).

**Table 168. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	N/A
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	Act No. 185/2015 Coll. on copyright (Copyright Act) Civil Code Act, No. 40/1964, as amended <sup>1342</sup> Civil Proceedings Code for Adversarial Proceedings, No. 160/2015 – <i>Zákon č. 160/2015 Z. z. Civilný sporový poriadok</i> <sup>1343</sup>
<b>Information Society (InfoSoc) Directive</b>	Act No. 185/2015 Coll. on copyright (Copyright Act) – <i>Zákon č. 185/2015 Z. z. Autorský zákon</i> <sup>1344</sup>
<b>E-Commerce Directive</b>	Act No. 22/2004 Coll. on e-commerce – <i>Zákon č. 22/2004 Z. z. o elektronickom obchode</i> <sup>1345</sup>
<b>Conditional Access Directive</b>	Act No. 646/2005 Coll. ( <i>Zákon č. 646/2005 Z. z. o ochranie niektorých rozhlasových programových služieb a televíznych programových služieb a služieb informačnej spoločnosti a o zmene a doplnení zákona č. 128/2002 Z. z. o štátnej kontrole vnútorného trhu vo veciach ochrany spotrebiteľa a o zmene a doplnení niektorých zákonov v znení neskorších predpisov</i> ) <sup>1346</sup>

Source: Slovak response to European Audiovisual Observatory standardised survey

## 6.27.2. National rules applicable to audiovisual sports content

### 6.27.2.1. Legal definitions of “broadcaster” and “sports event organiser”

In Slovakia, the term “broadcaster” is defined in Act No. 220/2007 Coll. on the digital broadcasting of programme services and the provision of other content services by digital means and the amendment of certain acts (the Digital Broadcasting Act).<sup>1347</sup> Pursuant to

<sup>1341</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

<sup>1342</sup> <https://www.mpo.cz/dokument14273.html#:~:text=40%2F1964%20Coll.%2C%20as%20amended,-Publikov%C3%A1no%3A&text=The%20Civil%20Code%20stipulates%20civil,rights%20and%20duties%20are%20important.>

<sup>1343</sup> <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/160/>.

<sup>1344</sup> <https://www.zakonypreludi.sk/zz/2015-185>.

<sup>1345</sup> <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/22/>.

<sup>1346</sup> <https://www.zakonypreludi.sk/zz/2005-646>.

<sup>1347</sup> <https://www.zakonypreludi.sk/zz/2007-220>.



Article 3 paragraph 7 of the Digital Broadcasting Act, a broadcaster is a natural person or a legal entity, which has an editorial responsibility for the content of the programme service and for the time composition of individual parts of the programme service that is broadcast or that the broadcaster allowed to be transmitted in an unaltered and unabridged form by a third person.

The Digital Broadcasting Act, which regulates some of the conditions for the provision of services directly related to digital transmission and the transition from analogue to digital transmission of terrestrial broadcasting signals, also refers to different types of broadcasters without giving a detailed definition, namely: (a) a broadcaster established by law (“public broadcaster”); (b) a broadcaster authorised to broadcast under a licence or under a special regulation (“analogue broadcaster”); (c) a broadcaster authorised to broadcast under this act which is not a public service broadcaster (“authorised broadcaster”); (d) a broadcaster via the internet; (e) a multiplex provider, (f) a content service provider that is not a programme service or multiplex; (g) an electronic communications service provider providing signal transmission (“signal distributor”) to the broadcaster or other content service provider.

At the same time, other acts in the Slovak legal order also regulate broadcasting (e.g. the Copyright Act or Act No. 308/2000 on broadcasting and retransmission). According to Article 2 of Act No. 308/2000 on broadcasting and retransmission and amending Act No. 195/2000 on telecommunications (*Zákon č. 308/2000 Z. z. o vysielaní a retransmisii a o zmene zákona č. 195/2000 Z. z. o telekomunikáciách*),<sup>1348</sup> this act applies to:

- (a) a broadcaster established by law (...) (referred to as “the broadcaster by law”),
- (b) a broadcaster which is not established by law and is authorised to broadcast under a licence granted under this Act or under a special regulation (...) (referred to as a “licensed broadcaster”),
- (c) a broadcaster via the internet

Furthermore, according to Article 3 of Act No. 1/2014 on the organisation of public sports events and on amendments to certain acts (*Zákon č. 1/2014 Z. z. o organizovaní verejných športových podujatí a o zmene a doplnení niektorých zákonov*), a “sports event organiser” is referred to as “a legal person, a natural person entrepreneur or a natural person”. The organiser of the sports event may also be a municipality. Moreover, according to Article 8 of this act, an “organising service” is defined as follows:

- (1) *The organising service is an organised and managed activity aimed at ensuring the peaceful course of the event in accordance with the law and the purpose of the event, maintaining public order and protecting the safety, health, morality, property, environment and ensuring the information and comfort of the event participants.*

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<sup>1348</sup> <https://www.zakonypreludi.sk/zz/2000-308>.



*(2) The organiser's service is performed by the principal organiser, security manager and organisers. The organiser of the event can also ensure the performance of the activities of the organiser's service by employing security services.*

According to Article 10 of Act No. 1/2014, "The main organiser manages the organisation of the sports event and ensures the performance of tasks according to the instructions of the event organiser".

#### 6.27.2.2. Legal protection related to sports events

According to Article 8 paragraph 8 of Act No. 440/2015 on sport (the Sports Act) (*Zákon č. 440/2015 Z. z. o športe a o zmene a doplnení niektorých zákonov, v znení neskorších predpisov*),<sup>1349</sup> a "sports organisation"<sup>1350</sup> has the right to give consent to the use of video, audio and video-audio transmissions and recordings from competitions and other events it organises. In addition, Article 8 paragraph 9 of the Sports Act provides that the sports organisation shall have the exclusive right to indicate the event by name, an unmistakable image symbol, an unmistakable audible signal and the exclusive right to use that signal.

In addition, if the sports event is recorded, the producer of the audiovisual recording holds exclusive rights in the recording, according to the Copyright Act.<sup>1351</sup> In particular, according to Article 118 of the Copyright Act, the producer of an audiovisual recording has the right to use his/her audiovisual recording and has the right to grant authorisation/consent to use the audiovisual recording by: making a copy of the audiovisual recording; by public distribution of the original audiovisual recording or a copy of it by transfer of title, rental, lending; by technical performance of the audiovisual recording; by broadcasting the audiovisual recording; by making the audiovisual recording available to the public.

On the other hand, when the sports event is broadcast, the broadcaster holds exclusive rights in the broadcast, according to Article 124 of the Copyright Act. The exclusive rights of the broadcaster are set out in Article 125 of the Copyright Act, which provides that the broadcaster has the right to use its broadcast and to grant authorisation/consent for its use. This includes the right to communicate the broadcast to

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<sup>1349</sup> <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/440/>

<sup>1350</sup> Article 15 paragraph 1 of the Sports Act provides that a sports club is a sports organisation that creates suitable conditions for the performance of sport, for the organisation of competitions and for the preparation and participation of individuals or cooperatives in a competition.

<sup>1351</sup> Based on article 116 of Copyright Act: (1) An audiovisual recording is a recording of an audiovisual work recorded as a sequence of intentionally arranged and interrelated images giving the impression of movement and accompanied by or without sound. (2) An audiovisual recording is also the recording of images accompanied by or without sound, regardless of how and on what medium these sounds and images are recorded. (3) The producer of an audiovisual recording is the natural or legal person who initiated or arranged for its final production. Article 117 of the Copyright Act provides that the right of the audiovisual producer includes exclusive property rights.

the public (e.g. in places accessible to the public against an entry fee); to make a recording of the broadcast or a copy thereof; to distribute the recording of the broadcast or a copy thereof to the public by transfer of title; to retransmit the broadcast; to make the recording of the broadcast available to the public. Furthermore, Article 128 of the Copyright Act provides that the provisions about copyright contractual law and the licensing rules also apply as appropriate to the broadcaster.

Regarding the entitlement to take legal action, the broadcaster may take legal action in the case of infringement of broadcasting or online transmission of a sports event, like any rightsholder according to the Copyright Act.

### 6.27.2.3. Other specific rules applicable to sports events

No other specific legal protection applies to sports event organisers in Slovakia. No specific rules are provided either under Slovak law concerning the use of sports content in social media.

**Table 169. Definitions of the main concepts concerning audiovisual sports events**

Concept	Existence of a definition	Relevant rights
<b>Broadcaster</b>	Yes	Related rights
<b>Sports event organiser</b>	Yes	Rights to give consent to the use of video, audio and video-audio transmissions and recordings from competitions and other events it organises

*Source: Slovak response to European Audiovisual Observatory standardised survey*

## 6.27.3. Remedies and sanctions applicable in the event of infringement

### 6.27.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

The Copyright Act and the Civil Proceedings Code for Adversarial Proceedings regulate provisional and precautionary measures, the evidence and measures for preserving evidence. According to Article 58 of the Copyright Act, an author whose rights have been unlawfully interfered with or whose rights are threatened with unlawful interference may request: (i) the acknowledgement of his/her authorship; (ii) the



prohibition of the infringement of his/her rights, including the prohibition of the recurrence of such a threat, including against the service provider through which the right is threatened; (iii) the provision of information; (v) the elimination of the consequences of the interference with the right at the expense of the infringer; compensation for non-material damages; compensation of damages; the return of unjust enrichment.

The legal provisions on compensation for damages in general – also applicable to broadcasters of sports events – are laid down in the Civil Code (Act No. 40/1964 Coll.). According to Article 442 paragraph 1 of the Code, compensation shall cover actual damage and what the aggrieved party lost (i.e. lost profits). Moreover, Article 442 paragraph 3 of the Code specifies that damage shall be compensated in money or by restitution to the original state (at the request of the aggrieved party and if it is possible and practical). Article 442a paragraph 1 of the Civil Code provides that when an intellectual property right has been put at risk or violated, the damages shall also be compensated in monetary terms if the adjudication of another rectification, in particular an apology or publication of the judgment at the expense of the person who put at risk or violated the intellectual property right, appears insufficient. Furthermore, according to Article 442a paragraph 2, if an intellectual property right is put at risk or violated and this right can be subject to a licence agreement (licence contract), the damages shall, unless determined otherwise, correspond to an amount that would at least compensate for the usual cost of acquiring such a licence at the time of the unlawful interference with this right; this shall accordingly also apply to intellectual property rights that may be subject to transfer. In accordance with Article 442 paragraph 4, if the damage is caused by an intentional criminal offence from which the perpetrator has derived a material benefit, the court may decide that the right to damages may be satisfied by means of property which the perpetrator has acquired as a result of the material benefit, even if such property is not subject to enforcement of the decision.

Concerning the protection of technological measures and rights management information (Article 6-7 of the InfoSoc Directive), Article 60 of the Copyright Act provides that (1) copyright is unlawfully infringed by the person who knowingly circumvents effective technological measures to protect rights under this act or who circumvents the necessity of obtaining consent to the use of the work under this act; (2) copyright is also unlawfully infringed by a person who, for direct or indirect economic benefit, provides services or manufactures, imports, distributes by sale or rental, promotes such distribution, or owns devices, products or components which (a) are promoted or offered for sale for the purpose of circumventing effective technological measures or circumventing the necessity of obtaining consent to use a work under this act, (b) in addition to circumventing effective technological measures or circumventing the necessity of obtaining consent for the use of a work under this act, have only a limited commercially significant purpose or usage; (c) are primarily intended, manufactured, modified or made to enable or facilitate circumvention of effective technological measures or the necessity of obtaining consent to use a work under this act.

According to Article 60 paragraph 3 of the Copyright Act, a technological measure refers to any process, product or component, which in the normal way of its use is intended to restrict or prevent unauthorised interference with the rights in works under



this act. Encryption, coding or other modification of a work or the application of another control mechanism for the use of the work shall also be regarded as a technological measure.

Furthermore, according to Article 3 of Act No. 646/2005 (transposing the Conditional Access Directive), it is prohibited to: (a) manufacture, import, sell, lease, keep or distribute unauthorised equipment (illicit devices) for profit; (b) install, maintain or replace unauthorised equipment (illicit devices) for profit; (c) use commercial communications to promote unauthorised devices. Unauthorised equipment shall be any equipment or software designed or modified to allow access to a protected service in an intelligible form without the permission of the service provider.

If all of these activities are exercised for the purpose of gaining profit, pursuant to Article 5 of Act No. 646/2005, fines can be imposed from EUR 16 596 to EUR 66 387.83 for the infringer that manufactures, imports, sells, rents, stores and distributes unauthorised equipment for profit; from EUR 3 319.39 to EUR 33 193.91 for the infringer that, for the purpose of making a profit, installs, maintains or replaces unauthorised equipment and/or performs commercial communications to promote unauthorised devices.

#### 6.27.3.2. National bodies with competences on copyright enforcement

There is no national authority (e.g. administrative body) other than judicial bodies with competences to address copyright infringement in Slovakia.

#### 6.27.3.3. Codes of conduct and Memorandums of Understanding

No codes of conduct or Memorandums of Understanding relating to the enforcement of intellectual property rights and the fight against online piracy were identified either by public or private entities in Slovakia.

It is worth highlighting here the publication of “Recommendations on Domain Piracy”, adopted by IAB Slovakia (the Association for Online Advertising)<sup>1352</sup> and aimed at limiting unfair enrichment at the expense of other trademarks on the Slovak internet.

On 25 June 2018, IAB Europe became a signatory to the MoU on online advertising and intellectual property infringement, with IAB Slovakia, IAB UK, IAB Italy and IAB Poland alongside AdForm, Google and GroupM.

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<sup>1352</sup> <https://www.iabslovakia.sk/en/>.



#### 6.27.3.4. Notice and take-down procedures

Notice and take-down (NTD) procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

NTD procedures are regulated by Article 6 (1) of Act No. 22/2004 on e-commerce. The service provider is not responsible for the transmitted information if the information society service consists exclusively of the transmission of information in the electronic communications network or the provision of access to the electronic communications network and the service provider a) did not initiate the transfer of information, b) did not select the recipient of the information, c) did not compile or modify the information.

#### 6.27.3.5. Removal and blocking orders

According to Article 58 paragraph 1 b) of the Copyright Act, an infringement of copyright or related rights may be prevented/blocked by a dilatory action (dilatory motion), including the prohibition of the repetition of the infringement. This action may be brought against the service provider through which the infringement takes place.

In terms of procedure, the Civil Proceedings Code for Adversarial Proceedings provides that, if the plaintiff brings an action, the court may (i) order the party by injunction to refrain from proceedings which endanger or infringe an intellectual property right; (ii) order an urgent measure before the main proceedings. In such a case, the court shall set a time limit for bringing an action. At the end of this period, the urgent measure shall expire; (iii) the court may, on the basis of an application by the successful plaintiff, grant the right to publish the judgment or part thereof at the expense of the defendant. In the judgment, the court shall determine the scope, form and manner of publication and the amount of the costs of publication of the judgment or the amount of the advance to be paid to the plaintiff whose action has been upheld.

Furthermore, based on Article 324 of the Civil Proceedings Code for Adversarial Proceedings, the court may

*before, during and after the proceedings (...), on application, order urgent action. The district court has jurisdiction to proceed with the application for urgent action. Urgent action is ordered by the court only if the purpose pursued cannot be achieved by a precautionary measure.*

Blocking injunctions are regulated in Article 341 paragraph 1 of Act No. 160/2015 (the Civil Proceedings Code for Adversarial Proceedings/*Civilný sporový poriadok*), which provides as follows: “By injunction, the court may order the party to refrain from actions which endanger or infringe an intellectual property right.”

Article 342 paragraph 1 of the Civil Proceedings Code for Adversarial Proceedings also provides that instead of issuing a blocking injunction, the court may order a financial deposit in the amount of the damage to the court’s account.

There is no specific procedure for the issuing of blocking injunctions in the case of online piracy of audiovisual sports content or live sports events and the general civil procedure applies.

#### 6.27.3.6. Measures against end-users

No specific measures are provided in the law against end-users and Slovak courts do not suspend or block internet access of end-users.

#### 6.27.3.7. Criminal sanctions

There are no special criminal proceedings for online piracy and the general legal framework applies, which is provided in Act No. 301/2005 (the Criminal Procedure Code/*Zákon č. 301/2005 z. z. Trestný poriadok, v znení neskorších predpisov*) and Act No. 300/2005 (the Criminal Act).

Pursuant to Article 211 paragraph 1 of the Criminal Procedure Code, the consent of the injured party is required in order to start the criminal procedure and even for continuing the criminal procedure for the crime of copyright infringement as provided in Article 283 of the Criminal Act.

As mentioned earlier, special criminal offences for copyright infringement are provided in Article 283 of the Copyright Act.

**Table 170. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial bodies)	No
Entitlement to take legal action	Yes, rightsholders under the Copyright Act
Codes of conduct	No
Specific proceedings	No
Specific remedies	No

Source: Slovak response to European Audiovisual Observatory standardised survey



**Table 171. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	Yes
Removal and blocking orders	Yes
Dynamic and/or live blocking injunctions	N/A
De-indexing injunctions	N/A
Damages and orders to cease and desist	Yes
Administrative offence and remedies	Yes (Article 32 paragraph 1 b) of Act No. 372/1990 on administrative offences, as amended), but related only to works and performances
Notice and take-down procedures	Yes

Source: Slovak response to European Audiovisual Observatory standardised survey

#### 6.27.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions, in relation to online infringement of audiovisual sports content.

**Table 172. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
Communication to the public	N/A	N/A
Hosting providers' knowledge and awareness of illegal activity	N/A	N/A
Notice and take-downs	N/A	N/A
Measures against end-users	N/A	N/A
Criminal sanctions	N/A	N/A

Source: Slovak response to European Audiovisual Observatory standardised survey



#### 6.27.4.1. Communication to the public

No cases have been detected specifically related to the notion of communication to the public and copyright infringement of audiovisual sports content.

#### 6.27.4.2. Online infringement of audiovisual sports content

There are no cases related to the online piracy of sports content.

#### 6.27.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

So far, there has been no case law dealing with the requirements for proving that intermediary service providers had actual knowledge of illegal activity.

#### 6.27.4.4. Notice and take-down requirements

No requirements have been specified for NTD procedures related to the copyright infringement of audiovisual sports content, according to the case law in Slovakia.

#### 6.27.4.5. Removal and blocking orders

In Slovakia, the courts may only use measures in order to remove or block illegal content that had been claimed by the parties to the proceedings. No practical cases could be found in relation to audiovisual sports content.<sup>1353</sup>

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<sup>1353</sup> Žárská, N. - Nevická, V.: *Žaloby podľa autorského zákona ako prostriedok ochrany autorských práv v online prostredí. Zborník z konferencie Bratislavské právnické forum 2018*. Online: [https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie\\_a\\_podujatia/bpf\\_2018\\_new/Zbornik\\_BPF2018\\_sekcia\\_11.pdf](https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie_a_podujatia/bpf_2018_new/Zbornik_BPF2018_sekcia_11.pdf) (25 January 2021), pp. 132 and 133: a doctrinal statistical analysis concerning the online environment pointed out the suitability and effectiveness of the different types of actions for use in an online environment. Half of the actions are for contractual obligation infringement arising from a collective licensing agreement concluded by the organisation of collective management of rights. These organisations also cover online use, which implies that this is a type of action suitable and effective in protecting copyright in the online environment. As appropriate and effective in the online environment, all actions appear effective except for actions for *restitutio in integrum*. All the other types of actions are effective and usable in the online environment, in particular dilatory motion.

#### 6.27.4.6. Measures against end-users ordered by the courts

Slovak courts do not take measures against end-users, such as suspending or blocking internet access.

#### 6.27.4.7. Compensation criteria adopted by the courts

In Slovak legal order, there are no statutory damages established by law in the case of damages that occur to sports event broadcasters. The court awards damages to sports event broadcasters (as the plaintiff) in the amount and to the extent that they prove that the damage has occurred. No case law could be found in relation to audiovisual sports content.

#### 6.27.4.8. Criminal sanctions ordered by the courts

There are plenty of criminal sanctions applied in criminal proceedings in the field of copyright infringement for committing criminal offences according to Article 283 of the Criminal Code. Most of them dealt with movies, music sharing or enabling download to third parties. However, there is no case law concerning online piracy of audiovisual sports content.

### 6.27.5. Reports and studies

From a non-legal perspective, the following reports and articles relate to online piracy of protected content in Slovakia:

- Žárská N. and Nevická D. (2018) “Copyright lawsuits as a means of protecting copyright in the online environment”, Bratislava legal forum, dealing with legal aspects of copyright infringement in the online environment<sup>1354</sup>
- Ralbovská Sopúchová S. (2018) “Are we moving legally or illegally?”, Milestones Conference/*Milníky* 2018, dealing with legal aspects of copyright infringement in the online environment<sup>1355</sup>
- Molnár, P. “Gaps In Copyright Legal Protection From Owners Of Audiovisual Work Against Their Abuse Of Online Pirate”<sup>1356</sup>

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<sup>1354</sup> Žárská, N. - Nevická, V.: *Žaloby podľa autorského zákona ako prostriedok ochrany autorských práv v online prostredí. Zborník z konferencie Bratislavské právnické forum 2018*:

[https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie\\_a\\_podujatia/bpf\\_2018\\_new/Zbornik\\_BPF2018\\_sekcia\\_11.pdf](https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie_a_podujatia/bpf_2018_new/Zbornik_BPF2018_sekcia_11.pdf).

<sup>1355</sup> Ralbovská Sopúchová, S.: *Sťahujeme legálne alebo nelegálne? Zborník z konferencie Milníky 2018*: [https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie\\_a\\_podujatia/milniky\\_zborniky\\_2011\\_2018/Zbornik\\_Milniky\\_2018.pdf](https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie_a_podujatia/milniky_zborniky_2011_2018/Zbornik_Milniky_2018.pdf).

<sup>1356</sup> Bratislava Legal Forum 2019, Comenius University Law Faculty, p. 6.

- “Guidance on enforcement of the copyright rights”<sup>1357</sup>.

In Slovakia, no specific study relating to illegal online transmission of sports events have been detected.

There is no reliable source concerning the technologies and business models used for the illegal streaming of sports content and no relevant study dealing with the legal offer of online sports content in Slovakia has been detected.

There have been some awareness campaigns related to online piracy carried out by associations or organisations. The Ministry of Culture of the Slovak Republic is also engaged – it administers the portal *Agorateka Slovakia* and runs the Intellectual Property Portal. Recently, there have been many articles educating the public about illegal actions on the internet and their consequences as well as raising awareness of issues relating to copyright.<sup>1358</sup> The most relevant risk for end-users is the risk posed by viruses.

Many articles on the internet warn that illegal downloading exposes end-users to a higher risk of illicit and dangerous content getting onto their computers, such as viruses or spyware that are attached to a file or to downloaded software.

There are also some associations which work actively in the copyright field:

1. IAB Slovakia – Interactive Advertising Bureau.<sup>1359</sup> The activity of this association involves the standardisation of the digital advertising market by establishing specific rules and standards for online advertising, as well as supervising the industry’s ethical rules. The association supports further development of the Slovak online ecosystem with the use of educational activities. It provides information about what is happening in the digital market segment in Slovakia and in the world and it monitors and informs the public about changes in legislation, which is closely connected to the digital environment. At the same time, the association works as a platform for mutual communication between the subjects of entrepreneurial activity in online advertising and as a channel of communication with third-party professional organisations in the sphere of the internet or with government authorities. It has been active in the digital market sector since 2005.
2. The Slovak Performing and Mechanical Rights Society (SOZA) is a legal entity and non-profit civic association of authors and publishers of musical works (i.e. a collective management organisation, which manages the rights to musical works); SOZA also disseminates information about piracy on the internet.<sup>1360</sup>

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<sup>1357</sup> [zodpovedne.sk](http://zodpovedne.sk).

<sup>1358</sup> A portal which aims to disseminate information about online infringement of copyright is: [zodpovedne.sk](http://zodpovedne.sk).

<sup>1359</sup> <https://www.iabslovakia.sk/us/aboutus/>.

<sup>1360</sup> Slovenský ochranný zväz autorský (soza.sk): <https://moja.soza.sk/>.



3. The Association of Television Broadcasters of Slovakia (ATVS), created by the commercial television stations.<sup>1361</sup>

## 6.27.6. Data compilation

This country report is based on data compiled by Daniela Ježová, LL.M., PhD, cooperator with the Institute of European Law at the Faculty of Law, Comenius University in Bratislava and is also a practicing attorney-at-law focusing on cases with a foreign element.

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<sup>1361</sup> <http://www.equark.sk/index.php?cl=meeting&iid=10>.



## 6.27.7. Annex

**Table 173. Overview of relevant transposition measures**

EU directives	National law
Conditional Access Directive 98/84/EC	Act No. 646/2005 Coll.
Article 5 Conditional Access Directive 98/84/EC – Infringing activities	Article 3 of Act No. 646/2005 Coll.
InfoSoc Directive 2001/29/EC	Act No. 185/2015 Coll. on copyright (Copyright Act)
Article 6 InfoSoc – Obligations as to technological measures	Article 60 of the Copyright Act
Article 8 InfoSoc – Sanctions and remedies	Article 58 of the Copyright Act
IPRED 2004/48/EC	The Civil Code – Act No. 40/1964 Coll. as amended Civil Proceedings Code for Adversarial Proceedings – <i>Zákon č. 160/2015 Z. z. Civilný sporový poriadok</i>
Article 6 IPRED – Evidence and Article 7 IPRED – Measures for preserving evidence	Articles 346-353 of the Civil Proceedings Code for Adversarial Proceedings
Article 8 IPRED – Right of information	Article 58 of the Copyright Act
Article 9 IPRED – Provisional and precautionary measures	Articles 341-342 of the Civil Proceedings Code for Adversarial Proceedings
Article 10 IPRED – Corrective measures	N/A
Article 11 IPRED – Injunctions	Article 58 of the Copyright Act
Article 12 IPRED – Alternative measures	N/A
Article 13 IPRED – Damages	Article 58 of the Copyright Act
E-Commerce Directive 2000/31/EC	Act No. 22/2004 Coll. on e-commerce - <i>Zákon č. 22/2004 Z. z. o elektronickom obchode</i>
Articles 12-15 E-Commerce Directive – Liability of intermediary service providers	Article 6 - Article 8 of Act No. 22/2004 Coll. on e-commerce
Article 17 E-Commerce Directive – Out-of-court dispute settlement	N/A
Art 20 E-Commerce Directive – Sanctions	N/A
DSM Directive EU 2019/790	Not transposed to date (as at October 2021)



## 6.28. UK – United Kingdom – National legal summary<sup>1362</sup>

### 6.28.1. General legal framework

#### 6.28.1.1. National legislation on copyright<sup>1363</sup>

In the United Kingdom (UK), the Copyright, Designs & Patents Act 1988 (the 1988 Act) is the main legislation that regulates the scope and the enforcement of copyright and related rights.<sup>1364</sup>

Significant secondary legislation includes:

- The Copyright and Related Rights Regulations 2003, transposing Directive 2001/29/EC through a series of amendments to the 1988 Act;<sup>1365</sup>
- The Intellectual Property (Enforcement, etc.) Regulations 2006, transposing Directive 2004/48/EC, mostly through amendments to the 1988 Act<sup>1366</sup>, though with stand-alone provisions in Section 3.<sup>1367</sup>

There are a number of differences within the three jurisdictions of the UK (England and Wales; Scotland; Northern Ireland), primarily in respect of court proceedings in Scotland.

Moreover, a further package of secondary legislation has been adopted in the context of the UK's exit from the European Union (EU). While in some cases these instruments amend the 1988 Act, in other cases they consist of, or contain, stand-alone provisions.<sup>1368</sup> This secondary legislation includes:

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<sup>1362</sup> It was not possible to receive feedback on the country report concerning the UK during the checking round with the national competent institutions.

<sup>1363</sup> The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>1364</sup> <https://www.legislation.gov.uk/ukpga/1988/48/contents>.

<sup>1365</sup> <https://www.legislation.gov.uk/uksi/2003/2498/contents>.

<sup>1366</sup> <https://www.legislation.gov.uk/uksi/2006/1028/contents/made>.

<sup>1367</sup> Other secondary legislation relates to other directives concerning copyright in relation to the protection of databases, the artists' resale right, orphan works, collective management of copyright, etc. which are not included in the scope of this report.

<sup>1368</sup> EU regulations in force at the point of exit have become part of the law of the UK, but can be amended or repealed. For instance, Regulation (EU) 2017/1563 (Marrakesh) has been so amended [Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2019, Section 36]. Regulation (EU) 2017/1128 (Portability) and the associated Portability of Online Content Services Regulations 2018 have been repealed in the UK.

- The Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2019 (amendments to the 1988 Act or secondary legislation);<sup>1369</sup>
- The Intellectual Property (Exhaustion of Rights) (EU Exit) Regulations 2019.<sup>1370</sup>

In the UK, copyright infringement can be considered both a civil law violation and a criminal offence. In particular, civil provisions concerning primary and secondary infringement in respect of copyright are found in Part I, Chapter 2 of the 1988 Act (e.g. Section 17 on “Infringement by copying”); procedures and remedies are set out in Chapter VI; Criminal offences are contained in Chapter VI of the 1988 Act, with the main offence in Section 107 and related provisions (concerning search, enforcement, etc), in Section 107A and Sections 108-110.

The UK’s law differentiates most of the offences depending on acting for profit: for example, for the making of infringing copy “in the course of a business”, [Section 107 (1)]; the making or possessing an article specifically designed or adapted for making copies of a particular work “in the course of a business” [Section 107 (2)]; the communication to the public, “where there is an intention to make a gain or knowing (...)” [Section 107 (2A)]; the manufacturing of devices for circumvention of TPMs “in the course of a business” [Section 296 ZB (1)] etc. The exception is Section 297 (fraudulently receiving programmes), which, although referring to the user’s dishonesty and their intention to avoid paying an applicable charge, is otherwise not restricted.

#### 6.28.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (DSM Directive)<sup>1371</sup> has not been transposed and the Government has stated that it will not be.

**Table 174. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	Will not be transposed.

<sup>1369</sup> <https://www.legislation.gov.uk/uksi/2019/605/contents/made>.

<sup>1370</sup> <https://www.legislation.gov.uk/uksi/2019/265/contents>.

<sup>1371</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.



EU directive	National law
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	Copyright, Designs & Patents Act 1988 (“Act 1988”) and Intellectual Property (Enforcement, etc.) Regulations 2006
<b>InfoSoc Directive</b>	Copyright and Related Rights Regulations 2003 <sup>1372</sup>
<b>E-Commerce Directive</b>	Electronic Commerce Regulations (2002) <sup>1373</sup>
<b>Conditional Access Directive</b>	Copyright, Designs & Patents Act 1988 (“1988 Act”)

Source: United Kingdom's response to European Audiovisual Observatory standardised survey

## 6.28.2. National rules applicable to audiovisual sports content

### 6.28.2.1. Legal definitions of broadcaster and sports event organiser

In copyright law, reference to a “person making a broadcast” is made in Section 6(3) of the 1988 Act, as follows:

- “the person transmitting the programme, if he has responsibility to any extent for its contents”, and
- “any person providing the programme who makes with the person transmitting it the arrangements necessary for its transmission.”

So the “author” for copyright purposes is the person making the broadcast or the person making an immediate retransmission [Section 9(2)(b)].

In media law, references are made to “licence holders” in respect of the various categories of broadcasting licences.<sup>1374</sup>

There is no legal definition of “sports event organiser” in UK law.

### 6.28.2.2. Legal protection related to sports events

There is no specific reference to sports events in the 1988 Act, nor is there any specific protection for event organisers.

<sup>1372</sup> <https://www.legislation.gov.uk/uksi/2003/2498/contents>.

<sup>1373</sup> <https://www.legislation.gov.uk/uksi/2002/2013/contents>.

<sup>1374</sup> Broadcasting Act 1990, <https://www.legislation.gov.uk/ukpga/1990/42/contents>; Broadcasting Act 1996, <https://www.legislation.gov.uk/ukpga/1996/55/contents>; Communications Act 2003, <https://www.legislation.gov.uk/ukpga/2003/21/contents>.



The question of how to apply copyright law to sports events was one of the major issues in the Court of Justice of the European Union (CJEU) *Football Association Premier League* joined cases.<sup>1375</sup> As is well known from these cases, the CJEU found that a sports event itself is not protected by copyright. However, the recording and broadcast of a sports event may be protected by copyright, where the recording meets the originality requirement.<sup>1376</sup> So, in some situations, the event organisers or the broadcaster will hold rights in copyright law. For instance, the FA Premier League has subsequently expressed its rights, in the context of applications for Section 97A injunctions (against service providers), in terms of:

- film copyright in action replays, film copyright in a recorded feed of games, artistic copyright in logos and on-screen graphics incorporated into the feed;<sup>1377</sup>
- its film copyright (in the footage) and its artistic copyright (in works contained within the footage).<sup>1378</sup>

According to the 1988 Act, the owner of copyright in a work has the exclusive right to undertake the following acts in the UK: copy the work (Section 17); issue copies of the work to the public (Section 18); rent or lend the work to the public (Section 18A); perform, show or play the work in public (Section 19); communicate the work to the public (Section 20); make an adaptation of the work or do any of the above in relation to an adaptation. Copyright in a work is infringed by a person who, without the authorisation of the copyright owner does or authorises another person to do any of the above acts restricted by copyright (Section 16(2)), subject to the various limitations and exceptions set out in the Act.

Regarding the entitlement to take legal action against infringers, rightsholders (e.g., broadcasters, event organisers in the cases mentioned above) can obtain damages, injunctions and legal protection. Exclusive licensees have the same rights as assignees, except against the rightsholder (Section 101). Non-exclusive licensees can act if certain conditions are satisfied (e.g. if a right of action has been expressly granted to them in writing) (Section 101A).

Regarding injunctions against service providers, Section 97A of the 1988 Act does not mention any conditions as to who can seek such an injunction. However, the High Court has held that a rightsholder (in this case a broadcaster) cannot licence the “right” to

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<sup>1375</sup> CJEU, 4 October 2011, *Football Association Premier League Ltd and Others v QC Leisure and Others* (C-403/08) and *Karen Murphy v Media Protection Services Ltd* (C-429/08), para. 96-99, <https://curia.europa.eu/juris/liste.jsf?num=C-403/08&language=en>.

<sup>1376</sup> See also, *Football Association Premier League Ltd & Ors v QC Leisure & Ors* [2012] EWHC 108 (Ch) (03 February 2012), <http://www.bailii.org/ew/cases/EWHC/Ch/2012/108.html>.

<sup>1377</sup> *The Football Association Premier League Ltd v British Sky Broadcasting Ltd & Ors* [2013] EWHC 2058 (Ch) (16 July 2013), <http://www.bailii.org/ew/cases/EWHC/Ch/2013/2058.html>.

<sup>1378</sup> *The Football Association Premier League Ltd v British Telecommunications Plc & Ors* [2017] EWHC 480 (Ch) (13 March 2017), <http://www.bailii.org/ew/cases/EWHC/Ch/2017/480.html>.



seek an injunction against a third party (in this case an event organiser). Indeed, although holders of exclusive licences of rights protected by the 1988 Act can seek such injunctions against a third party under Section 97A (as if they were the holders of the rights in question),<sup>1379</sup> the situation is different since the exclusive licence relates to the right to seek the injunction and does not concern other rights (e.g. communication to the public). Nonetheless, the broadcaster could “assign” its rights to sue to the organiser, so that the application could be processed.<sup>1380</sup>

In some cases, the relevant rights may be split across parties, e.g. some rights owned by the event organiser and others by the broadcaster. In such case the above-mentioned approach of one party assigning the right to bring proceedings to the other is taken.<sup>1381</sup>

There is evidence of co-operation between rightsholders. For instance, in *FA Premier League v BT*,<sup>1382</sup> proceedings were supported by a number of other sports league organisers (in football and in other sports) and by the public service British Broadcasting Corporation and its international commercial arm BBC Worldwide. In *Matchroom Boxing v. BT*,<sup>1383</sup> it was confirmed that the FA Premier League has shared aspects of its approach to and technology supporting dynamic web blocking with other rightsholders, notwithstanding its generally confidential nature (that is, not included in published orders or judgments).

In some cases, private criminal prosecutions have been instigated on behalf of rightsholders. In particular, the Federation Against Copyright Theft<sup>1384</sup> is active in private prosecutions and other activities, and has been for a number of decades. Major cases, including one leading to a four-year prison sentence (for conspiracy to defraud), proceeded in this way.<sup>1385</sup> However, issues do arise; for instance, the *Murphy* cases<sup>1386</sup> were prosecuted by Media Protection Services (MPS), a company acting on behalf of the FA Premier League, but it was subsequently held that MPS activities may have been prohibited by legislation from providing legal services (although had MPS been under the control of the rightsholder, the position would have been more straightforward). The reason for the use of private prosecutions is apparent from the statement that neither the police nor prosecutorial authorities investigate or prosecute alleged breaches of Section

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<sup>1379</sup> On the basis of the general provisions of Section 101 of the Act, allowing exclusive licencees access to the same rights and remedies as owners, read in conjunction with IPRED.

<sup>1380</sup> See *Queensberry Promotions v BT* [2018] EWHC 3273 (Ch), <https://www.bailii.org/ew/cases/EWHC/Ch/2018/3273.html>.

<sup>1381</sup> See *Matchroom Boxing v BT*, [2018] EWHC 2443 (Ch): <https://www.bailii.org/ew/cases/EWHC/Ch/2018/2443.html>.

<sup>1382</sup> *FA Premier League v BT*, [2017] EWHC 480 (Ch), op. cit.

<sup>1383</sup> *Matchroom Boxing v BT*, [2020] EWHC 2868 (Ch), <https://www.bailii.org/ew/cases/EWHC/Ch/2020/2868.html>.

<sup>1384</sup> Federation Against Copyright Theft, <https://www.fact-uk.org.uk/>.

<sup>1385</sup> *Vickerman* (Newcastle Crown Court, 14 August 2012).

<sup>1386</sup> *Murphy v Media Protection Services* [2008] EWHC 1666 (Admin), <https://www.bailii.org/ew/cases/EWHC/Admin/2008/1666.html>.



297 of the 1988 Act due to a lack of resources<sup>1387</sup> and the comparatively low value of some alleged criminal infringements under this and other provisions of the 1988 Act.

### 6.28.2.3. Other specific rules applicable to sports events

There is no other specific legislation in the UK that protects sports event organisers against online piracy of audiovisual sports content.

No specific rules are provided either concerning the use of sports content on social media. However, one leading case on “clips” from sports events online and on social media (applying the 1988 Act) is *England & Wales Cricket Board vs Tixdaq*.<sup>1388</sup> In this case, the court concluded that the reproduction and communication to the public of clips from the claimant’s broadcasts and films via a social media app infringed the claimant’s copyright.

**Table 175. Definitions of the main concepts concerning audiovisual sports events**

Concept	Existence of a definition	Relevant rights
Broadcaster	Yes	Copyright or related rights (depending on who owns the rights in the content)
Sports event organiser	No	Copyright or related rights (depending on who owns the rights in the content)

Source: United Kingdom’s response to European Audiovisual Observatory standardised survey

## 6.28.3. Remedies and sanctions applicable in the event of infringement

### 6.28.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

All measures and remedies provided in the IPRED (measures for preserving evidence, right of information, provisional and precautionary measures, corrective

<sup>1387</sup> *Darroch v FA Premier League* [2016] EWCA Civ 1220 [5], <https://www.bailii.org/ew/cases/EWCA/Civ/2016/1220.html>.

<sup>1388</sup> *England & Wales Cricket Board vs Tixdaq* [2016] EWHC 575 (Ch), <https://www.bailii.org/ew/cases/EWHC/Ch/2016/575.html>.



measures, injunctions, damages, legal costs etc.) are available to copyright owners in the case of infringement of their rights.

Sanctions, remedies and injunctions are regulated by the 1988 Act. Chapter VI thereof regulates procedures and remedies for infringement, including damages in infringement action, order for delivery up, seizure of infringing copies and other articles, or injunctions against service providers (which were introduced into the 1988 Act, after the transposition of the InfoSoc Directive).

In relation to damages, Section 97 establishes as follows:

- 1) Where in an action for infringement of copyright it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that copyright subsisted in the work to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.*
- (2) The court may in an action for infringement of copyright having regard to all the circumstances, and in particular to:
  - (a) the flagrancy of the infringement, and*
  - (b) any benefit accruing to the defendant by reason of the infringement,*award such additional damages as the justice of the case may require.*

Injunctions are available in respect of infringement by way of Section 96 of the 1988 Act (infringement) and Section 97A (service providers). Section 37(1) of the Senior Courts Act<sup>1389</sup> also allows the High Court to grant injunctions (in England and Wales) in all cases in which the measure appears to be convenient and just (including against innocent parties), and so applies to situations beyond the scope of the provisions on remedies in the 1988 Act.<sup>1390</sup> This approach has not yet been tested in Scotland.

Concerning the protection of technological measures and rights management information (Articles 6-7 of the InfoSoc Directive), Part VII of the 1988 Act regulates the criminal offence concerning the circumvention of technological measures. In particular, Section 296ZB(1) concerning devices used for the circumvention of technical protective measures (TPMs) refers to the manufacturing for sale or hire, importing otherwise than for private or domestic use, selling/letting/possessing/distributing/etc in the course of a business, or distributing other than in the course of a business to such an extent as to affect prejudicially the owner of the copyright. In addition, Section 296ZB(2) regarding services for circumvention of TPMs is applicable to providing, promoting etc. such a service in the course of a business or to such an extent as to affect prejudicially the owner of the copyright. Section 296ZG refers to the removal or alteration of rights management information.

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<sup>1389</sup> <https://www.legislation.gov.uk/ukpga/1981/54/contents>

<sup>1390</sup> For instance, the High Court in *Nintendo v Sky* [2019] EWHC 2376 (Ch) granted an injunction against service providers at the request of a computer games company in respect of websites connected with devices allowing for the circumvention of technological protection measures; this follows the leading case (in trademark law), *Cartier International v BT* [2018] UKSC 28.





Furthermore, as regards the legal protection of services based on, or consisting of, conditional access, the Conditional Access (Unauthorised Decoders) Regulation 2000 was inserted in Section 297A and Section 298 of the 1988 Act. In particular, Section 297A regulates criminal offences in respect of unauthorised decoders. Section 297A(2) refers to making, importing, selling, letting, as well as, for commercial purposes, possession, installing, maintaining, or replacing, and advertising or promoting through commercial communications of unauthorised decoders. Furthermore, Section 298 allows the person protected (i.e. one who makes a charge for reception, sends encrypted transmissions, or provides conditional access services) to act as if they were a copyright owner in respect of copyright (i.e. the various remedies under the 1988 Act). Such person may also exercise the rights under Sections 99 and 100 of the 1988 Act regarding delivery up or seizure of apparatus. It is worth noting that this legislation has been amended as part of the UK's exiting of the EU and now both the criminal and civil provisions only apply in respect of broadcasting services or information society services provided from a place in the UK.

Both Section 297A and 298 have been considered in cases concerning audiovisual sports content, albeit not in an online context.<sup>1391</sup> Moreover, many of the earlier prosecutions under Section 297A relate to non-online contexts (e.g. satellite broadcast from other jurisdictions,<sup>1392</sup> subscriptions or decoder cards issued to domestic users being used in a non-domestic setting).<sup>1393</sup> However, it is clear that the section is available in respect of, inter alia, unauthorised streaming of audiovisual sports content, which could only be accessed through a subscription-based encrypted service.<sup>1394</sup>

### 6.28.3.2. National bodies with competences on copyright enforcement

In the UK, there are no national bodies with specific competences on infringement of copyright other than courts.

The UK Intellectual Property Office is the specialised agency (and the regulator of collective management organisations), but its functions in respect of copyright

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<sup>1391</sup> The leading case on Section 298 (civil) is *FA Premier League v QC Leisure* [2008] EWHC 1411 (Ch) (<https://www.bailii.org/ew/cases/EWHC/Ch/2008/1411.html>), which included a reference to the CJEU. The result of the CJEU proceedings is that Section 298 does not apply where a 'foreign' decoder card is being used; indeed, the *QC Leisure* proceedings continued under domestic law but only in respect of copyright infringement more generally: [2012] EWHC 108 (Ch), <https://www.bailii.org/ew/cases/EWHC/Ch/2012/108.html>.

<sup>1392</sup> See in *Turner v Stafford Crown Court* [2011] EWHC 490 (Admin) [judgment only available through subscription services].

<sup>1393</sup> See in *FACT v Ashton* [2013] EWHC 1923 (Admin), <https://www.bailii.org/ew/cases/EWHC/Admin/2013/1923.html>.

<sup>1394</sup> *R v Dady* [2013] EWHC 475 (QB) (in the context of finding that the person responsible for a website which charged a fee to users for access to such streams may be charged with *conspiracy* to breach Section 297), <https://www.bailii.org/ew/cases/EWHC/OB/2013/475.html>.



infringement are primarily training and research, including a mediation service online or face-to-face, rather than enforcement.<sup>1395</sup>

The Office of Communications (“Ofcom”) is the regulatory authority for communications services. Ofcom carries out research regarding copyright infringement in its periodic tracking but is similarly not responsible for addressing specific situations of infringement.<sup>1396</sup> A proposed role for Ofcom was included in the Digital Economy Act 2010 but did not come into effect.

The Copyright Tribunal established by the 1988 Act deals with commercial licensing rather than infringement – usually disputes between collective management organisations and commercial users (e.g. broadcasters).

### 6.28.3.3. Codes of conduct and Memorandums of Understanding

Two groups of stakeholders working in the field of copyright enforcement are particularly relevant in the UK. The Intellectual Property Crime Group founded in 2004 has a membership of representatives from private sector, enforcement agencies and government departments who have a role in tackling IP crime and infringement in the UK. The group meets every quarter to discuss current IP crime and infringement issues, trends, potential ways to work collaboratively and to share best practice.<sup>1397</sup>

The Police Intellectual Property Crime Units sits within the City of London Police (the national lead force for fraud). It was established in 2013 in order to investigate serious and organised IP crime in the UK. Some initiatives of this department include “Operation Creative” and its associated Infringing Website List (a list of websites associated with infringement, which is supplied to advertisers).<sup>1398</sup> The Unit has also an arrangement with Nominet (the official registry for “.uk” domain names), under which the Unit notifies the registry of infringement associated with a registered “.uk” domain and the registry will normally suspend it.<sup>1399</sup> The Unit has also a series of Memorandums of Understanding (MoUs) with rightsholders, some have been published through a 2017 Freedom of Information request.

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<sup>1395</sup> <https://www.gov.uk/government/organisations/intellectual-property-office>.

<sup>1396</sup> <https://www.ofcom.org.uk/about-ofcom/what-is-ofcom>.

<sup>1397</sup> <https://www.gov.uk/government/publications/ip-crime-and-enforcement-for-businesses/the-uk-ip-crime-group>.

<sup>1398</sup> [http://news.cityoflondon.police.uk/r/842/operation\\_creative\\_prevents\\_millions\\_of\\_pounds\\_en](http://news.cityoflondon.police.uk/r/842/operation_creative_prevents_millions_of_pounds_en).

<sup>1399</sup> The Police Intellectual Property Crime Unit also adopted a series of MoUs with rightsholders and some have been published through a 2017 Freedom of Information request ([https://www.whatdotheyknow.com/request/policies\\_and\\_agreements\\_for\\_pipc\\_2](https://www.whatdotheyknow.com/request/policies_and_agreements_for_pipc_2)): <https://www.cityoflondon.police.uk/police-forces/city-of-london-police/areas/city-of-london/about-us/about-us/pipc/>.

#### 6.28.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded, including content-sharing platforms.

There are no legislative provisions in respect of notice and take-down procedures that would apply to IP law, beyond the transposition of the E-Commerce Directive itself.<sup>1400</sup> Articles 12-15 of this directive were transposed in the Electronic Commerce (EC Directive) Regulation 2002, as Regulations 17-19. In addition, Regulation 22 sets out factors for a court to take into account when determining whether “actual knowledge” of illegal activity is present (for the purpose of Articles 13 and 14) – that is, notice through the contact details supplied as per Article 5 of the Directive, and the presence of the name and address of the sender, details of where the impugned material is found, and details of its unlawful nature.

#### 6.28.3.5. Removal and blocking orders

Injunctions are available and regulated in the 1988 Act. If an injunction is sought against an alleged infringer, the general provisions of Chapter VI of the 1988 Act apply. In particular, Section 96 provides that rightsholders have access to damages, injunctions, accounts or otherwise, in the same way as property rights more generally. Injunctions against service providers are available on the basis of Section 97A and Section 191JA of the 1988 Act, which transposed Article 8(3) of the InfoSoc Directive and, for matters beyond the scope of copyright, Section 37(1) of the Senior Court Act 1981 (England and Wales only).

Section 97A of the 1988 Act does not specify the type of available measures. Case law demonstrates the range of injunctions that are available. The earliest cases (regarding internet-related infringement of copyright more generally rather than specifically regarding audiovisual sport content) saw relatively simple injunctions being sought and granted. Later cases, including those concerning audiovisual sport content saw a broader range, such as blocking, “live” and “dynamic” injunctions (see details in section 6.25.4.5 of this country sheet). All the injunctions, as shown by the case law, can also apply to live sports events.

In terms of procedure, the rightsholder applies to the relevant court (typically the High Court of England and Wales, though it is also possible to do so in the Court of Session in Scotland) and the court will, if satisfied, grant the injunction against the service

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<sup>1400</sup> There are a number of other areas of law where specific procedures apply, e.g. Defamation Act 2013, Section 5 (defence for operators of a website with detailed provisions around various notices and obligations).



provider(s) in question. The typical practice is for an injunction to be sought against the major Internet Service Providers (ISPs).<sup>1401</sup>

It is common practice for aspects of the proceedings to be treated as confidential and, in particular, not included in the published judgment or order,<sup>1402</sup> as certain disclosures would defeat the object of the order through publicising forms of infringement or allowing infringers to adapt their behaviour in order to avoid detection. The initial view on costs was that the costs of implementing the resulting order should be met by the service provider, but recent case law took the opposite approach (such costs must be reimbursed by the rightsholders) and this now appears to be the case in respect of new injunctions.<sup>1403</sup>

The questions to be asked by a court hearing a Section 97A application have become clearer over the years. There is now an apparent emphasis on a proportionality analysis, including the comparative importance of rights, effectiveness, dissuasiveness, the availability of alternative measures, not being unnecessarily complicated or costly, avoiding barriers to legitimate trade, and the presence of safeguards.

While it is possible under Part 23 of the (England and Wales) Civil Procedure Rules<sup>1404</sup> for applications to be heard and granted “on paper” (without a hearing), this will not be appropriate in some cases, given the general principle that proceedings be heard in public unless otherwise provided, and the novel or complex nature of certain applications (e.g. the type of alleged infringement in question).<sup>1405</sup>

#### 6.28.3.6. Measures against end-users

In the UK, there are no provisions concerning measures against end-users. However, in the past, the Digital Economy Act 2010 included provisions on limiting internet access to end-users (Sections 3-16, inserting new Section 124A-N into the Communications Act 2003), through new legal duties for ISPs.<sup>1406</sup> Aspects of this regulation was challenged on various grounds including the compliance with EU law<sup>1407</sup> and although it survived in the face of those challenges, it has never been implemented.

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<sup>1401</sup> The exact makeup of this group has varied over the years, though the most recent cases have been against the six largest providers (BT, EE, Plusnet, Sky, TalkTalk, and Virgin Media) who together as of 2021 represent over 90% of the market for (fixed) broadband Internet access. See also, *Young Turks v BT* [2021] EWHC 410 (Ch) [47], <https://www.bailii.org/ew/cases/EWHC/Ch/2021/410.html>.

<sup>1402</sup> See as explained in *FA Premier League v BT* [2017] EWHC 480 (Ch) [9], <https://www.bailii.org/ew/cases/EWHC/Ch/2017/480.html>.

<sup>1403</sup> See *Young Turks* [2021] EWHC 410 (Ch) [96], <https://www.bailii.org/ew/cases/EWHC/Ch/2021/410.html>.

<sup>1404</sup> <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part23>.

<sup>1405</sup> *20th Century Fox v Sky* ('Popcorn Time') [2015] EWHC 1082 (Ch), <https://www.bailii.org/ew/cases/EWHC/Ch/2015/1082.html>.

<sup>1406</sup> <https://www.legislation.gov.uk/ukpga/2010/24/contents>.

<sup>1407</sup> *R (BT) v Secretary of State for Culture, Media and Sport* [2012] EWCA Civ 232, <https://www.bailii.org/ew/cases/EWCA/Civ/2012/232.html>.

The “Creative Content UK” scheme (2014) (no longer active) covered some similar ground, in so far as its “Voluntary Copyright Alert Programme” facilitated rightsholders (music and film) providing evidence of infringement to ISPs and ISPs providing educational information to the allegedly infringing end-users. However, this mechanism neither suspended nor blocked, nor identified end–users to the rightsholders.

### 6.28.3.7. Criminal sanctions

Fines and imprisonment are the sanctions applied under UK law for copyright infringement. Regarding the application of fines, there is no limit provided by law. The terms of imprisonment are differentiated in relation to the specific offence, including: (i) ten years’ imprisonment for sale or hire [Section 107(1)(a)] of Chapter VI of the 1988 Act, importing other than for private or domestic use [Section 107(1)(b)], distributing in the course of a business [Section 107(1)(d)(iv)], distributing other than in the course of a business to such an extent as to affect prejudicially the owner of the copyright [Section 107(1)(e)]. These penalties have strengthened, most recently in 2017, when the Parliament (in the Digital Economy Act 2017, Section 32<sup>1408</sup>) increased the maximum sentence for Section 107(2A) from two years to ten years; (ii) two years’ imprisonment for all TPM offences (Section 296ZB); (iii) three months’ imprisonment for possession during a business with a view to infringement [(Section 107(1)(c)], selling, letting, offering, or exposing for sale or hire, or exhibiting in public in the course of a business [(Section 107(1)(d)(i)-(iii)], making or possessing an article specifically designed or adapted for making copies of a particular work [Section 107(2)], and the equivalent offences in Section 198.

**Table 176. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	No
Specific rules on the use of sports content on social media	No
Competent bodies (other than judicial bodies)	No
Entitlement to take legal action	Yes
Codes of Conduct	Yes

<sup>1408</sup> <https://www.legislation.gov.uk/ukpga/2017/30/section/32>.



Specific proceedings	No
Specific remedies	No

Source: United Kingdom's response to European Audiovisual Observatory standardised survey

**Table 177. National remedies in the case of copyright infringement**

Typology	Description
Criminal Prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	Yes
Removal and blocking injunctions	Yes
Dynamic and/or live blocking injunctions	Yes
De-indexing injunctions	Not mentioned in the law; never applied
Damages and orders to cease and desist	Yes
Administrative offences and remedies	No
Notice and take-down procedures	Yes

Source: United Kingdom's response to European Audiovisual Observatory standardised survey

## 6.28.4. Case Law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions, in relation to online infringement of audiovisual sports content.

**Table 178. Relevant case law related to copyright infringements of audiovisual sports content**

Content	Substance of the decision	Decisions
Communication to the public	The application of principles regarding the communication to the public have been applied also to audiovisual sports content.	FA Premier League v QC Leisure; Paramount v British Sky Broadcasting; FA Premier League v O'Donovan.
Hosting providers' knowledge and awareness	The application of the principle provided in Article 14 of the E-commerce Directive and transposed	Tamiz v Google; [2012] EWHC 449 (QB) [52]-[61];



Content	Substance of the decision	Decisions
<b>of illegal activity</b>	into UK law, related to these cases concerning: blog hosting; need to show the host the basis on which the material is unlawful; material on social media.	[2016] NIQB 98.
<b>Notice and take-down</b>	N/A (in relation to online infringement of audiovisual sports content).	N/A
<b>Measures against end-users</b>	Identification of the end-users with the collection of personal data.	Mircom International Content Management v Virgin Media; Golden Eye v Telefonica UK; Media CAT v Adams; Rugby Football Union v Viagogo.
<b>Criminal sanctions</b>	Application of imprisonment as a measure for: access audiovisual sport content for conspiracy to defraud; operation through a website selling IPTV devices allowing free access to subscription sports and other channels; selling devices and operated a streaming services for various fraud.	Warwick Crown Court, 20 March 2019; Newcastle Crown Court, 15 July 2018; Truro Crown Court, 19 December 2019; Westminster Magistrates' Court, 3 October 2019.

Source: United Kingdom's response to European Audiovisual Observatory standardised survey

#### 6.28.4.1. Communication to the public

The concept of communication to the public (Section 20 of the 1988 Act) is drafted in broad terms and has formed a significant aspect of the case law. For instance, the initial (2008)<sup>1409</sup> and the post-CJEU (2012)<sup>1410</sup> proceedings in *FA Premier League v QC Leisure* saw detailed treatment of whether playing a broadcast of sports content in a venue constituted a communication to the public of protected works. In this case, the court decided that it does in respect of certain works, though subject to Section 72 of the 1988 Act and so not including the broadcast itself nor film works contained in it.<sup>1411</sup> In this case,

<sup>1409</sup> *FA Premier League Ltd v QC Leisure & Ors*, Chancery Division, 24 June 2008, <https://www.srb.com/wp-content/uploads/2013/10/FA-Premier-League-v-QC-Leisure-ChD-24-Jun-08.pdf>.

<sup>1410</sup> *Football Association Premier League Ltd v QC Leisure* [2012] EWHC 108 (Ch) (3 February 2012).

<sup>1411</sup> The 2008 judgment refers to different input from the production, such as the cameras angle, the sound capture, the video sequences, on-screen graphics, commentary, etc. For more details see section 1.1.4.2



the principles related to the communication to public have been applied to streaming servers and audiovisual sports content.<sup>1412</sup>

The Section 97A cases (injunctions against service providers) similarly include some discussion of whether communication to the public is engaged. For example, the *Paramount v British Sky Broadcasting* case (2013)<sup>1413</sup> (concerning linking) and the later decision in *Paramount v British Sky Broadcasting* (2014)<sup>1414</sup> - taking into account of the CJEU's judgment in *Svensson* - set out a list of 18 factors; The *20th Century Fox v Sky* case ("Popcorn Time") (2015)<sup>1415</sup> (on apps as opposed to hosting or linking service), though finding that despite the absence of a Section 20 breach, infringement was still found through joint tortfeasorship; the *FA Premier League v BT* case (2017)<sup>1416</sup> (application of Section 20 principles to streaming servers and audiovisual sports content).<sup>1417</sup> Beyond these cases, the case law has developed through e.g. a "test case" on audio streaming (radio) and Section 20 in *Warner Music v Tuneln* (2019)<sup>1418</sup> (a detailed review of the CJEU case law since *Svensson* and a set of eight further principles concerning linking).

#### 6.28.4.2. Online infringement of audiovisual sports content

Some cases may be highlighted in relation to the special legal protection against online infringements of audiovisual sports content.

In particular, the removal of an exception (Section 72 of the 1988 Act) allowing the showing (without rightsholder's permission) of film works contained in a broadcast in places to which the public are admitted without charges, has been reflected in how rightsholders approach civil proceedings in respect of the showing of a broadcast of sports events where the defendant is, for example, the owner of an entertainment or hospitality venue.<sup>1419</sup> It is, however, still the case that Section 72 allows the showing of broadcasts in such premises without infringing the copyright in the broadcast itself or in some sound recordings. This amendment – the removal of film works from the longstanding exception – was a result of other proceedings, in *QC Leisure*, where the application of the earlier exception to all film works was found to be incompatible with

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<sup>1412</sup> CJEU C-403/08, *FA Premier League v QC Leisure*, 4 October 2010, <https://www.bailii.org/ew/cases/EWHC/Ch/2017/480.html>.

<sup>1414</sup> *Paramount v British Sky Broadcasting*, [2014] EWHC 937 (Ch).

<sup>1415</sup> *20th Century Fox v Sky* ("Popcorn Time") <https://www.bailii.org/ew/cases/EWHC/Ch/2015/1082.html>.

<sup>1416</sup> *FA Premier League v BT* [2017] EWHC 480 (Ch), See in particular & 33 et sequi <https://www.bailii.org/ew/cases/EWHC/Ch/2017/480.html>.

<sup>1417</sup> For example, in order to establish whether there is an act of copying by users, the Court established that "In the course of streaming the Works, users who access a stream cause their computer, mobile device or set-top box to create copies of the Works in the memory of those devices (...). In the case of films of matches, copying of a substantial part is very likely to occur if users stream footage of any appreciable segment of the match (...)"

<sup>1418</sup> *Warner Music v Tuneln* [2019] EWHC 2923 (Ch), <https://www.bailii.org/ew/cases/EWHC/Ch/2019/2923.html>.

<sup>1419</sup> *FA Premier League v O'Donovan* [2017] EWHC 152 (Ch): <https://www.bailii.org/ew/cases/EWHC/Ch/2017/152.html>.



the InfoSoc Directive (though the legislative revision ultimately went further than strictly necessary on account of the case)<sup>1420</sup>. Other cases related to audiovisual sports content are reported in the paragraph 6.28.4.5.

#### 6.28.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

There is limited case law in domestic law on Article 14, typically arising in relation to non-IP cases (e.g. defamation or privacy). A key case in England and Wales is *Tamiz v Google* (concerning blog hosting);<sup>1421</sup> the corresponding provision of national law was considered in detail in the High Court (emphasising the need to show the host the basis on which the material is unlawful),<sup>1422</sup> though the Court of Appeal<sup>1423</sup> considered other matters. In Northern Ireland, the provision was considered further in the *J20/JR20* proceedings in respect of material on a social media site.<sup>1424</sup>

#### 6.28.4.4. Notice and take-down requirements

There is no specific notification procedure either in the 1988 Act or the transposition of the E-Commerce Directive. However, as mentioned earlier, Regulation 22 sets out factors for a court to take into account when determining whether actual knowledge of illegal activity is present – that is notice through the contact details supplied as per Article 5 of the Directive, and the presence of the name and address of the sender, details of where the impugned material is found and details of its unlawful nature.

#### 6.28.4.5. Removal and blocking orders

Injunctions against service providers under Section 97A have become an established feature in the UK, in respect of infringement in a wide range of contexts (music, film, computer games, audiovisual sports content) and means of infringement (filesharing, cloud storage/cyberlocker, set top box, streaming, links). Orders are typically sought against the major ISPs.

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<sup>1420</sup> *FA Premier League v QC Leisure* [2008] EWHC 1411 (Ch), <https://www.bailii.org/ew/cases/EWHC/Ch/2008/1411.html>.

<sup>1421</sup> *Tamiz v Google*, [2012] EWHC 449 (QB) [52]-[61], <https://www.5rb.com/case/tamiz-v-google-inc-ca/>.

<sup>1422</sup> ([2012] EWHC 449 (QB) [52]-[61]).

<sup>1423</sup> ([2013] EWCA Civ 68).

<sup>1424</sup> *J20/JR20*, [2016] NIQB 98 and [2017] NICA 48.



Specifically related to the application of such orders, there is a case in which the injunction granted against ISPs required the blocking of access to one specified website (which provided links to live streams).<sup>1425</sup> In another case the court granted, for the first time, an injunction in respect of streaming servers (rather than one or more websites). In particular, the court reviewed changes since earlier cases had been decided, noting for instance the availability of set-top boxes and similar devices, and the high quality of unauthorised live streams hosted by providers out of the jurisdiction who are unwilling to cooperate with requests.<sup>1426</sup> The injunction granted was a “live” and “dynamic” one, only applicable when fixtures were being broadcast live and provided for weekly updates (removals and additions from the list of servers). Both the broad legal principles and the associated detection and blocking technologies, established for a trial period in the latter part of the 2016-17 football season, have been re-used for subsequent seasons in respect of the same league and in respect of other football leagues<sup>1427</sup>, and other sports in respect of boxing fixtures.<sup>1428</sup>

There are no reported cases concerning de-indexing in IP law.<sup>1429</sup>

As regards the removal and blocking orders in respect of infringement more generally, there are several cases that can be cited. For instance, a case concerning a website used for sharing digital versions of films, that was instigated by rightsholders (film studios). An initial decision, with those responsible for the website as the defendants, had considered infringement in considerable detail. Subsequently, the High Court granted the blocking injunction, making specific reference to the existence of relevant blocking systems already implemented by ISPs on a voluntary basis, in conjunction with the non-statutory Internet Watch Foundation, in respect of indecent images of children.<sup>1430</sup>

In another set of early cases concerning a website (The Pirate Bay) and sound recordings and other works, a first decision established the presence of infringement both by the operators of the website and by its users (the operator or users neither appeared nor were represented in court), and in the context of proceedings initiated in order to secure a Section 97A injunction (against internet service provider). A second decision

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<sup>1425</sup> *FA Premier League v British Sky Broadcasting*, <https://www.bailii.org/ew/cases/EWHC/Ch/2013/2058.html>.

<sup>1426</sup> *FA Premier League v BT* [2017] EWHC 480 (Ch):

<https://www.bailii.org/ew/cases/EWHC/Ch/2017/480.html>

<sup>1427</sup> *UEFA v BT* ([2017] EWHC 1877 (Ch); [2018] EWHC 1828 (Ch))

<https://www.bailii.org/ew/cases/EWHC/Ch/2017/3414.html>.

<sup>1428</sup> *Matchroom Boxing v BT* [2018] EWHC 2443 (Ch)

<https://www.bailii.org/ew/cases/EWHC/Ch/2018/2443.html>. *Matchroom Boxing v BT* [2020] EWHC 2868 (Ch)  
<https://www.bailii.org/ew/cases/EWHC/Ch/2020/2868.html>.

<sup>1429</sup> The leading domestic case on de-indexing in data protection law and privacy law (misuse of private information) is *NT1 v Google and NT2 v Google* [2018] EWHC 261 (QB)

<https://www.bailii.org/ew/cases/EWHC/OB/2018/261.html>.

<sup>1430</sup> *20th Century Fox v BT* [2011] EWHC 1981 (Ch):

<https://www.bailii.org/ew/cases/EWHC/Ch/2011/1981.html>.



considered Section 97A and granted the blocking injunction against ISPs.<sup>1431</sup> In these proceedings, all but one of the major ISPs consented to or did not oppose the proposed injunction; in subsequent proceedings, similar injunctions were issued in respect of other websites, concerning three separate websites connected with peer-to-peer sharing<sup>1432</sup>.

Later cases have tended to involve a “single step”, i.e. an application for an injunction by rightsholders, consent or no opposition from any of the defendant ISPs, and a single written judgment of the court setting out the reasons for the granting of the injunction including both the infringement and any terms of the injunction. In these cases, the court asked four questions: (i) is the respondent a service provider (always yes); (ii) is infringement taking place on the part of (for instance) website operators or users (it must be demonstrated through relevant evidence); (iii) are said users / operators using the respondent’s services (always yes); (iv) does the respondent have actual knowledge (always yes as applicants will have provided such notice in advance of seeking the injunction).

Two recent cases concerned new types of applications (e.g. in early 2021, the first application concerning “stream ripping” services [i.e. extracting an audio file in fixed (downloadable) form from the live stream] Another case concerned a “cyberlocker” (a variant of a cloud storage service).<sup>1433</sup>

#### 6.28.4.6. Measures against end-users ordered by the courts

The most detailed treatment of this question in England and Wales is found in *Mircom International Content Management v Virgin Media* (2019).<sup>1434</sup> Mircom and other rightsholders sought the details (names/addresses) of users of the defendant ISP, using a Norwich Pharmacal application.<sup>1435</sup> Although it was found that data protection law was not an obstacle to orders of this nature (including in light of the Regulation 2016/679), on this occasion the court refused to grant the order (no matter the quality of the evidence

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<sup>1431</sup> *Dramatico Entertainment v British Sky Broadcasting* [2012] EWHC 652 and [2012] EWHC 1152 (Ch): <https://www.bailii.org/ew/cases/EWHC/Ch/2012/268.html>  
<https://www.bailii.org/ew/cases/EWHC/Ch/2011/1981.html>.

<sup>1432</sup> *EMI Records v British Sky Broadcasting*: <https://www.bailii.org/ew/cases/EWHC/Ch/2013/379.html>.

<sup>1433</sup> *Capitol Records v BT* [2021] EWHC 409 (Ch): <https://www.bailii.org/ew/cases/EWHC/Ch/2021/409.html>.

<sup>1434</sup> *Mircom International Content Management v Virgin Media*:  
<https://www.bailii.org/ew/cases/EWHC/Ch/2019/1827.html>

<sup>1435</sup> A Norwich Pharmacal order is a court order for the disclosure of documents or information that is available in England and Wales and Northern Ireland. It is granted against a third party which has been innocently mixed up in wrongdoing, forcing the disclosure of documents or information. By identifying individuals the documents and information sought are disclosed in order to assist the applicant for such an order in bringing legal proceedings against individuals who are believed to have wronged the applicant. A Norwich Pharmacal order was first granted in 1974 by the House of Lords in *Norwich Pharmacal Co. v Customs and Excise Commissioners*, a case concerning the alleged violation of a patent by unknown importers of the chemical subject to the patent. *Mircom International Content Management v Virgin Media*  
<https://www.bailii.org/ew/cases/EWHC/Ch/2019/1827.html>.



presented by the applicants and the absence of actual action resulting out of earlier orders).

Prior to this case, other cases concerned the application of measures towards end-users.<sup>1436</sup> In Scotland, obtaining information of this nature may fall within the scope of Regulation 4 of the Intellectual Property (Enforcement, etc.) Regulations.

#### 6.28.4.7. Compensation criteria adopted by the courts

There are no compensation criteria adopted by the court in civil proceedings, though damages are available in general. An exception is Section 97A of the 1988 Act (applied for cases against service providers), which is frequently used by rightsholders in respect of online infringement but where no damages are available. In criminal proceedings, there are some situations where offenders convicted in respect of audiovisual sports content have been required to make payments (to public funds rather than to the rightsholder) through confiscation orders.<sup>1437</sup>

#### 6.28.4.8. Criminal sanctions ordered by the courts

Relevant cases concerning the application of criminal sanctions ordered by the courts are: (i) the imprisonment of three individuals involved in allowing end-users to access audiovisual sport content for conspiracy to defraud<sup>1438</sup>; (ii) the imprisonment of one individual who operated a website selling IPTV devices allowing free access to subscription sports and other channels for Proceeds of Crime Act 2002 offences<sup>1439</sup>; (iii) the imprisonment of one individual who sold devices and operated streaming services for various fraud offences<sup>1440</sup>; (iv) the suspended sentence of the seller of subscriptions to a streaming service<sup>1441</sup>; (v) in 2019, the first conviction of a retailer selling a streaming device giving unauthorised access to audiovisual sports content was reported<sup>1442</sup>.

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<sup>1436</sup> Golden Eye v Telefonica UK: <https://www.bailii.org/ew/cases/EWCA/Civ/2012/1740.html>; Media CAT v Adams: <https://www.bailii.org/ew/cases/EWPCC/2011/6.html>; Rugby Football Union v Viagogo: <https://www.bailii.org/uk/cases/UKSC/2012/55.html>.

<sup>1437</sup>Newcastle Crown Court, 27 February 2020: <https://www.fact-uk.org.uk/seller-of-illicit-streaming-devices-ordered-to-pay-over-500000/>.

<sup>1438</sup> Warwick Crown Court, 20 March 2019: <https://www.fact-uk.org.uk/three-sellers-of-illegal-streaming-devices-jailed-for-a-total-of-17-years-for-defrauding-premier-league/>.

<sup>1439</sup> Derby Crown Court, June 2019; see IP Group Report 2020 p. 85.

<sup>1440</sup> Newcastle Crown Court, 15 July 2018: <https://www.fact-uk.org.uk/five-year-jail-sentence-for-operator-of-major-illegal-streaming-service/>.

<sup>1441</sup> Truro Crown Court, 19 December 2019: <https://www.falmouthpacket.co.uk/news/18112964.steven-underwood-appeared-truro-crown-court-today/>.

<sup>1442</sup> Westminster Magistrates' Court, 3 October 2019: <https://www.fact-uk.org.uk/london-retailer-convicted-of-fraud-and-copyright-offences/>.

## 6.28.5. Reports and studies

Major publicly funded studies and reports include:

- the Intellectual Property Office (IPO)'s regular "online copyright infringement tracker survey", now in its 10th wave;<sup>1443</sup>
- the IP Crime Group's annual "IP crime report" (last published September 2020);<sup>1444</sup>
- "Digital Opportunity": a review of IP rights and growth (the "Hargreaves Review" which informed various legislative amendments and policy initiatives in subsequent years) (2011)<sup>1445</sup>.

The independent academic research centre CREATE<sup>1446</sup> (housed at the University of Glasgow), funded through the United Kingdom Research Councils, carried out extensive work, including a major scoping review on unlawful filesharing (2015<sup>1447</sup>) and the Copyright Evidence wiki<sup>1448</sup>.

There are some reports that consider the issue of illegal online transmission of sports events. For example, in the annual IP Crime Report (pp 84-86 of the 2020 report) and in a "live sport" section of the OCI tracker (pp 132-147 of the 10th wave).

There are also reliable sources that report the technologies and business models used for the illegal streaming of sports content: for instance, the IPO's 2017 paper "Illicit IPTV Streaming Devices"<sup>1449</sup> and the Government response to it<sup>1450</sup>.

No studies were identified describing the legal offer of online sports content in the UK.

Regarding awareness campaigns related to online piracy, two relevant ones may be highlighted:

- "Get It Right From A Genuine Site"<sup>1451</sup>; and
- "Moments Worth Paying For"<sup>1452</sup>.

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<sup>1443</sup> <https://www.gov.uk/government/collections/intellectual-property-research-copyright>.

<sup>1444</sup> <https://www.gov.uk/government/publications/annual-ip-crime-and-enforcement-report-2019-to-2020>.

<sup>1445</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/32563/preview-finalreport.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/32563/preview-finalreport.pdf).

<sup>1446</sup> <https://www.create.ac.uk/>.

<sup>1447</sup> <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0127921>.

<sup>1448</sup> <https://www.copyrightevidence.org/>.

<sup>1449</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/594048/illicit-IPTV-streaming-devices-call-for-views.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/594048/illicit-IPTV-streaming-devices-call-for-views.pdf).

<sup>1450</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/750177/Gov-Response-call-for-views-illicit-IPTV.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/750177/Gov-Response-call-for-views-illicit-IPTV.pdf).

<sup>1451</sup> <https://www.getitrightfromagenuinesite.org/>.

<sup>1452</sup> <https://www.industrytrust.co.uk/campaigns/moments/>.

Recently, warning letters have been issued by various police forces to subscribers to allegedly unlawful streaming services.<sup>1453</sup>

There are associations of broadcasters or rightsholders that actively work to address the issue of online piracy of audiovisual sports content: the IP Crime Group and the Federation Against Copyright Theft (FACT)<sup>1454</sup>.

## 6.28.6. Data compilation

This country report is based on data compiled by Dr. Daithí Mac Síthigh, formerly Professor of Law and Innovation, at the Queen’s University Belfast, who has research and teaching interests in law and technology, media law, and copyright, and directed the QUB LLM Law and Technology. Advice from Dr. Pauline McBride on areas of Scots law is gratefully acknowledged.

## 6.28.7. Annex

**Table 179. Overview of relevant transposition measures**

EU directives	National law
<b>Conditional Access Directive (98/84/EC)</b>	Act 1988, amended by Conditional Access (Unauthorised Decoders) Regulations 2000.
<b>Article 5 of Directive 98/84/EC - Infringing activities</b>	Sections 297A and s 298.
<b>InfoSoc Directive (2001/29/EC)</b>	Act 1988, amended by Copyright and Related Rights Regulations 2003.
<b>Article 6 ISD - Obligations as to technological measures</b>	Sections 296ZA-ZF.
<b>Article 8 - Sanctions and remedies.</b>	Sections 107, 198, 97A, 191JA.
<b>IPRED (2004/48/EC)</b>	Intellectual Property (Enforcement, etc.) Regulations 2006 <sup>1455</sup> .

<sup>1453</sup> <https://www.fact-uk.org.uk/thousands-of-subscribers-to-illegal-streaming-service-warned-by-police-2/>.

<sup>1454</sup> “Knock and Talk” campaign of 2019 is one of the campaigns organised by the Federation Against Copyright Theft.

<sup>1455</sup> <https://www.legislation.gov.uk/ukxi/2006/1028/contents/made>.



EU directives	National law
<b>Article 6 of the IPRED – Evidence and Article 7 of the IPRED - Measures for preserving evidence</b>	Not transposed as already part of UK law
<b>Article 8 of the IPRED - Right of information</b>	Intellectual Property (Enforcement, etc.) Regulations 2006, clause 4 (for Scotland; already the law in England & Wales and Northern Ireland)
<b>Article 9 of the IPRED - Provisional and precautionary measures</b>	Not transposed as already part of UK law
<b>Article 10 of the IPRED - Corrective measures</b>	Not transposed as already part of UK law
<b>Article 11 of the IPRED – Injunction</b>	Not transposed as already part of UK law
<b>Article 12 of the IPRED – Alternative measures</b>	Not transposed as already part of UK law
<b>Article 13 of the IPRED - Damages</b>	Intellectual Property (Enforcement, etc.) Regulations 2006, clause 3.
<b>E-Commerce Directive (2000/31/EC)</b>	Electronic Commerce (EC Directive) Regulations 2002 <sup>1456</sup> .
<b>Articles 12-15 ECD – Liability of intermediary service providers</b>	Sections 17-19 (Article 15 was not transposed).
<b>Article 17 ECD - Out-of-court dispute settlement</b>	N/A
<b>Article 20 ECD – Sanctions</b>	N/A
<b>DSM Directive (EU 2019/790)</b>	Not transposed – not a part of the law of the UK.

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<sup>1456</sup> <https://www.legislation.gov.uk/uksi/2002/2013/contents>.





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