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COPYRIGHT AND SPORT BROADCASTING: NEW CHALLENGES IN THE ERA OF LIVE STREAMING

Master Thesis

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LIST OF ABBREVIATIONS

EU – European Union

ECJ – European Court of Justice

EPL – English Premier League

FAPL – Football Association Premier League

IPTV – Internet Protocol Television

KNVB – Dutch Football Association

P2P – Peer-To-Peer Networks

TFEU – Treaty on the Functioning of the European Union

UEFA – Union of European Football Associations

UK – United Kingdom

INTRODUCTION

The rapid development of digital technologies has given great benefits for community not only in the sphere of obtaining information, but also in enhancing freedom of expression. New horizons of communication were opened with allowing people to connect to the global network. One of the significant changes was in the way how people are watching sports. New discoveries in technology have provided consumers with possibility to switch from viewing sports via sports channels on television to the internet streaming technology through portable device (mobile phones, tablets, laptops) that have a connection to the global network.[1]

Such fast development in technology introduced a number of challenges in the protection of intellectual property at all and in the sphere of copyright in particularly. In order to manage with new issues and to find a reasonable and commercially viable balance between the rights of copyright owners and consumers of works in which copyright are contained it should be necessary to update existing legislation. One of such new challenges is the problem of live streaming of sports events. Live streaming was entitled as a new era in sports broadcasting but at the same time it has brought great possibilities for consumers to breach the law and to receive unauthorized broadcasts of live sports events. The illegal streaming of live sports has raised new issues in the copyright law. Unfortunately, it is not clear to which degree EU copyrights law doctrine is applied in these circumstances. The incomes which originally accumulated from consumers, who are legally watch content by paying for the right to watch broadcasts, were blurred by intervention of illegal live streaming retransmission. From this point of view, live streaming technology represents a double hazard to the sport organizers and broadcasting organizations. On the one hand it pushes away potential consumers and incomes while on the other hand potential customers continue to use broadcasters' content.[2]

The significant value of such infringements can be explained by way that broadcasting rights are one of the most important revenues for professional sports leagues and organizations. The broadcasts organizations invest hundreds millions of euro for the exclusive right to broadcast sports events and they are trying to ensure that their huge investments are totally protected from unlawful third parties intervention.[3]

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[1] Kanchana Kariyawasam, Matthew Tsai, "Copyright and live streaming of sports broadcasting," International Review of Law, Computers & Technology, Volume 31, Issue 3 (2017): pp. 265-266, accessed April 15, 2019, DOI: 10.1080/13600869.2017.1299553.
[2] Ibid.
[3] Michael J. Mellis, "Internet Piracy of Live Sports Telecasts," 18 Marq. Sports L. Rev. 259 (2008): pp. 259-260, accessed April 15, 2019, http://scholarship.law.marquette.edu/sportslaw/vol18/iss2/2.

Relevance of the final thesis

In the last 4 years, the development in live streaming technology has opened possibility to upload video footage from portable devices (mobile phones, tablets, etc.) to the Internet for worldwide, instantaneous viewing through mobile application. Such a favourable technological development caused discussions of the legitimacy of using mobile applications to broadcast commercial sporting events. It is not clear to which extend sports organizers and broadcast organizations can rely on copyright protections of theirs rights in mentioned situation. The evaluation of existing opinions, presented by scholars and courts, and legal provisions should be made for clear understanding of the scope of protection which is provided by copyright law.

Scientific novelty and overview of the research on the selected topic

Literature review has shown that copyright protection of sports events is very controversial question nowadays. When broadcasts organizations can totally rely on copyright protection of their audiovisual works of sports events it is still remain unclear what parts of their works are protected by copyright law. The latest development of app based technology for live streaming has opened new wave of discussion for copyright protection over sports events and sport broadcasting. Marc Edelman[4], Kanchana Kariyawasam[5] have published their articles from the point of view of common law countries, but it still remains empty the EU approach regarding copyright protection for sports events and sport broadcasts from app based live streaming infringements.

The new sufficient research needs to be made to address this question. The bases for such research will be works of Thomas Margoni[6] and Ben Van Rompuy[7] which fully examined forms of protection of sports events in the EU. This Master thesis will cover all aspects of

[4] Marc Edelman, "From Meerkat to Periscope: Does Intellectual Property Law Prohibit the Live Streaming of Commercial Sporting Events?," Columbia University Academic Commons, 39:4 (2016), accessed April 15, 2019, https://doi.org/10.7916/D89Z95CW.
[5] Kanchana Kariyawasam, Matthew Tsai, "Copyright and live streaming of sports broadcasting," International Review of Law, Computers & Technology, Volume 31, Issue 3 (2017): pp. 265-266, accessed April 15, 2019, DOI: 10.1080/13600869.2017.1299553.
[6] Thomas Margoni, "The protection of sports events in the EU: Property, intellectual property, unfair competition and special forms of protection," IIC - International Review of Intellectual Property and Competition Law, 47(4) (2016): pp. 386-417, accessed April 15, 2019, doi:10.1007/s40319-016-0475-8.
[7] Ben Van Rompuy, "Study on sports organisers' rights in the European Union," T.M.C. Asser Instituut / Asser International Sports Law Centre Institute for Information Law - University of Amsterdam, (2014), accessed April 15, 2019, DOI: 10.2139/ssrn.2455313.

copyright protection of sports events and sport broadcasts from illegal live streaming retransmission in the EU level.

Problem of research

Taking into account existing situation the following problematic aspect may be raised: "Whether the broadcast organizations and sports events organizers have enough copyright legal tools to protect their rights from illegal live streaming retransmission?"

The aim of the research

The aim of this research is to examine existing legal ways of copyright protection of sport events, to identify weak points of copyright protection over live streaming sport broadcasting and to make suggestions for more effective legal protection.

The objectives of the research

In order to achieve such aim, the following objectives were formulated:

- To define which requirements should be covered by sports events in order to become a copyrightable subject matter and to analyse whether the sports events as such are the subject matter of copyright law;
- To identify what is covered by concept of "house right" and to understand to which extend sports owners and sports organizers can protect their rights by "house right";
- To examine ways of audiovisual recording of sports events and to clarify which parts of work are protected by copyright;
- To analyse what challenges occurred in the sector of live streaming of sport broadcasting and to determine ways of increasing effectiveness of copyright legal protection over sport broadcasting.

Significance of research

The results of the research could be used by policy makers in further development of EU legislation, for improving actual situation which exist in the sphere of copyright protection over illegal live streaming of sports events in way of filling legal gaps and review of problematic provisions.

Moreover, conclusions and recommendations of this research could to be important to other scholars who are involved in researching problems in directions of discovering the necessity of copyright protections of sports events as such.

Research methods

The following methods are used in order to achieve the aim of the Master thesis:

Method of logics, (General scientific method). Method of logics is used for analysis and synthesis, induction and deduction, climbing from abstract to concrete. Method is used in conjunction while applying other utilized methods to raise assumptions, assess whether they could be confirmed or denied.

Method of analogy, (General scientific method). By this method different objects will be compared and their similarities will be highlighted. By the analogical reasoning arguments will be provided about similarities between different objects or systems in order to confirm conclusion about existing resemblance.

System method, (General scientific method). Method is used to clarify the main features of judicial practice, legal documents and publications of legal scholars related to copyright and sport broadcasting.

Linguistic method, (General scientific method). Linguistic method will be applied to understand the meaning of the legal concepts and definitions relevant to copyright while analysing the provisions of the legal acts and case law.

Comparative method, (Own methods of law). Comparative method is used to compare the opinions of different authors regarding the same subjects and issues.

Formal legal method, (Own methods of law). Formal legal method was used to logical processing and interpretation of legal norms related to the broadcasting, copyright and related rights. Method was also used to find out the will of the legislator expressed in the text of the regulations and directives.

Thesis structure

The Master Thesis consists of introduction, 4 chapters that are divided into subchapters, conclusion, recommendations and the list of bibliography The First Chapter gives the overview of the concept of copyright and answer to the question whether sports events as such are protected by copyright. Chapter Two provides analysis of possible ways of protection for

audiovisual sports events recordings. Chapter Three introduces new challenges in protection of sports events from illegal live streaming and provides possible ways of increasing protection by copyright legal tools.

Chapter 1 will provide analysis of EU concept of copyright and what requirement should be met by the work in order to become subject matter of copyright. It is also will be analyzed whether sports events as such are the subject matter of copyright and will define methods of protection for sports events by the concept of "house right".

Chapter 2 will discuss the types of the audiovisual recording of sports events and will identify which parts of works are protected by copyright or by neighbouring rights.

Chapter 3 will focus on the problems of live streaming of sports events through mobile application from dedicated venues and live streaming retransmission of sport broadcast via the internet. It will address whether such infringements can be resolved by copyright and will research possible legal ways of increasing legal protection over sports events and sport broadcasting protection.

Defence Statements

- Absence of copyright protection over sports events as such entails difficulties for sports events organizers for legal protection of theirs investment against illegal live streaming from dedicated venues.
- EU should introduce new harmonized 'notice-and-takedown' system which would better facilitate the needs in reducing illegal content online at all and particularly in combating illegal live streaming of sports events.

1. Concept of copyright and related rights in sports event as such

Sport constitutes a large and rapid growing sector of the economy and shows an important contribution to the development and jobs growth with effects which exceed the average growth rates. Around 2% of global GDP is generated by the sport sector.[8]

"A growing part of the economic value of sports is linked to intellectual property rights. These rights relate to copyright, commercial communications, trademarks, and image and media rights. In an increasingly globalised and dynamic sector, the effective enforcement of intellectual property rights around the world is becoming an essential part of the health of the sport economy."[9] IP rights in the sport area such as licensing of retransmission of sports events have become the primary sources of income for professional sports in Europe. Revenues which were received from these sources often partly distributed to lower sports chains. Such injections help a large number of people to be engage in amateur sports, which in turn affects the general social well-being. The effective protection of these sources of revenue is important in guaranteeing independent financing of sport activities.[10]

Based on such positive economic and social impact, sports organisers start argued that sport needs more legal protection than what is now available at the EU level. New wave of argument for additional protection has become particularly compelling during last years, as a clear answer for emergence of new technologies, which have increased potential harm that the illegal use of sport content can cause to the legitimate interest of entities or individuals who bare the risk (both organizational and financial) conducting the sports events.[11] One of the main concerns is related with illegal retransmissions of sporting events. It is not arguable that whether for other types of illegally transmitted content such as films or music the temporal dimension is important, for live sports events it is critical.[12] Typically value of live televised sports events is

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[8] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Developing the European Dimension in Sport, Brussels, COM (2011) 12 final (2011): para. 3, accessed April 15, 2019, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52011DC0012.

[9] European Commission, White Paper on Sport COM (2007) 391 final (2007): para. 3, accessed April 15, 2019, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0391.

[10] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Developing the European Dimension in Sport, Brussels, COM (2011) 12 final (2011): para. 3.2, accessed April 15, 2019, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52011DC0012.

[11] Audiovisual rights in sports events An EU perspective, (Briefing March 2017): p.9, accessed April 15, 2019, http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599320/EPRS_BRI(2017)599320_EN.pdf

[12] James Rickard, "Going Live: The Role Of Automation In The Expeditious Removal Of Online Content," Boston University Law Review, 96(60) (2016): p. 2186, accessed April 15, 2019, https://www.bu.edu/bulawreview/files/2017/01/RICKARD.pdf

depleted immediately upon the transmission of live event. Respectively, effective blocks by legal remedies the availability of the protected content after few days from giving notice seems insufficient for the unauthorized live streaming of sports events.

Consequently, sports events organisers have repeatedly informed European Commission about the need for new and more effective legal instruments that protect theirs rights from the unauthorized use of sports content.[13] This Chapter will try to evaluate whether sports events as such are protected by intellectual property rights. Firstly the concept of Copyright and related rights in sports events will be discussed. Then property rights of sporting events will be highlighted.

1.1 Acquis communautaire subject matter of copyright

First of all, in evaluating whether sport event as such is protected by copyright it should be necessary to examine the concept of copyright. The domain of copyright is the protection of literary and artistic works. The oldest international convention governing copyrights, the Berne Convention[14], states the following in Article 2: "The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain whatever may be the mode or form of its expression".[15] The Convention further gives list of examples of literary and artistic works which is not exhaustive. The expression 'such as' extends opportunity for creations other than the ones which was mentioned in the list.

The Bern Convention emphasise "original" character of the works in Article 2(3) regarding adaptation and Art.14bis regarding film,[16] but does not contain definition of "originality".[17]

Moreover, presence of originality is contained in Article 2(5): "Collections of literary or artistic works such as encyclopedias and anthologies which, by reason of the selection and

[13] Green Paper: "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Value", Consultation Response by the Sports Rights Owners Coalition (SROC) (2013): pp. 9-11, accessed April 15, 2019, https://ec.europa.eu/digital-single-market/en/news/consultation-green-paper-preparing-fully-converged-audiovisual-world-growth-creation-and-values.

[14] Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979), (1979), accessed April 15, 2019, https://wipolex.wipo.int/en/text/283693.

[15] Ibid.

[16] Ibid.

[17] Mireille van Eechoud, Bernt Hugenholtz et al., Harmonizing European Copyright Law: The Challenges of Better Lawmaking, Information Law Series 19, Alphen aan den Rijn: Kluwer Law International (2009): p. 33.

arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections".[18]

This provision gives more lights of what type of originality required for collections of literary and artistic works. Such originality should be intellectual creations.[19]

The protection of more recent information related products such as computer programs and databases were successfully added through the TRIPs Agreement[20] and the WIPO Copyright Treaty.[21] According to these international agreements software and databases should be protected as literary works under Berne Convention if they, as the same of collections of literary or artistic works, constitute 'intellectual creations'.[22]

The acquis communautaire is silent in relation to subject matter of copyright and related rights. No one of EU Directives related to copyright gives clear explanation of how the notion of a work of authorship should be interpreted. EU legislator just only makes reference to the subject matter protected by copyright as a 'literary or artistic work within the meaning of Article 2 of the Berne Convention',[23] 'copyright works',[24] 'works of authorship' or simply 'work'[25] without any further specification.[26]

For the software and database the Computer Programs Directive[27] and the Database Directive[28] granted protection only if the software or database is the "author's own intellectual creation".[29] Photographs, as a part of work of authorship under Article 2 of Berne Convention

[18] Berne Convention for the Protection of Literary and Artistic Works, (as amended on September 28, 1979), (1979), accessed April 15, 2019, https://wipolex.wipo.int/en/text/283693.
[19] Thomas Margoni, "The Harmonisation of EU Copyright Law: The Originality Standard," University of Glasgow - School of Law - CREATe (June 2016): p.4, accessed April 15, 2019, http://dx.doi.org/10.2139/ssrn.2802327.
[20] Agreement On Trade-Related Aspects Of Intellectual Property Rights, (1995): Art. 10, accessed April 15, 2019, https://www.wto.org/english/docs_e/legal_e/27-trips.pdf.
[21] WIPO Copyright Treaty (adopted in Geneva on December 20, 1996) (2002): Art.4, 5, accessed April 15, 2019, https://wipolex.wipo.int/en/text/295157.
[22] Ibid.
[23] Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (2006): Art.1
[24] 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 (2006): Art. 1(1)
[25] 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 (2001): Article 2(1).
[26] Mireille van Eechoud, Bernt Hugenholtz et al., Harmonizing European Copyright Law: The Challenges of Better Lawmaking, Information Law Series 19, Alphen aan den Rijn: Kluwer Law International (2009), p. 35.
[27] Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (2009).
[28] Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (1996).
[29] Computer Programs Directive: Art. 1(3); Database Directive: Art 3(1).

and Term Directive[30], worth protection only, if they are 'original' in the sense that they constitute "the author's own intellectual creation reflecting his personality".[31]

The wording 'reflecting his personality' constitutes stricter 'continental' approach than was adopted for the computer programs and databases. Continental test requires 'personal expression' rather than pure own intellectual creation. Such a formulation was developed in order to separate the term of protection of photographs with 'personality' from 'other' photographs.[32]

From the other side the aim of the originality test which is contained in the Computer Programs Directive is to harmonize strict continental test and Anglo-Saxon liberal 'skill and labour' standard.[33] As a result of such conformation continental countries ('droit d'auteur' countries) have lowered standard of protection for software, while EU common law countries (particularly United Kingdom and Ireland) have raised their protection.[34]

As could be noted there are three types of work: computer programs, databases and photographs which were 'vertical' harmonized. Such fragmentary and subject-matter specific approach is explained through the lack of direct attribution of powers by the conferral principle.[35] Until recently, the only possible way of EU intervention in the field of copyright was competence to respectively adopt measures with the aim of establishing or ensuring the functioning of the internal market and the approximation of the laws of Member States,[36] which were granted through the articles 24 and 116 of the Treaty on the Functioning of the European Union.[37]

The first step for 'horizontal' way of harmonization was made by European Court of Justice in the way of interpretation. Infopaq judgment[38] became the landmark decision which tried to elaborate EU copyright concept of 'work'.[39] In this case, the questions asked by the Danish court were related to the interpretation of Article 2(a) of Information Society Directive and the conditions for exemption of temporary acts of reproduction within the meaning of

[30] Term Directive.
[31] Ibid., Retical 16.
[32] van Eechoud, Harmonizing European Copyright Law: The Challenges of Better Lawmaking, p. 41.
[33] Ibid.
[34] Report from the Commission to the Council, the European Parliament and the Economic and Social Committee on the implementation and effects of Directive 91/250/EEC on the legal protection of computer programs, (2000): para. 6.
[35] Consolidated version of the Treaty on European Union, (2012): Art. 5.
[36] Margoni, The Harmonisation of EU Copyright Law: The Originality Standard, p.8.
[37] Consolidated version of the Treaty on the Functioning of the European Union, (2012).
[38] Case C-5/08, Infopaq International A/S v Danske Dagblades Forening, (2009).
[39] Mireille van Eechoud, "Along the Road to Uniformity Diverse Readings of the Court of Justice Judgments on Copyright Work," 3 (2012) JIPITEC (2012): p.60, accessed April 15, 2019, https://www.jipitec.eu/issues/jipitec-3-1-2012/3322/eechoud.pdf.

Article 5 of that Directive.[40] Infopaq is a Danish media monitoring and analysis business which use 'data capture process' to provide for their clients summaries of selected articles from Danish daily newspapers and other periodicals. The spines later were sent to the clients by the mail.[41]

In order to address to the question whether text extract from the article in daily newspaper can be regarded as act of reproduction within the meaning of Article 2 Information Society Directive, the Court concluded that "protection of the author's right to authorise or prohibit reproduction is intended to cover 'work'".[42] Further, the Court evaluated applicable international and community law[43] and came to the general conclusion that "copyright within the meaning of Article 2(a) of Information Society Directive is liable to apply only in relation to a subject-matter which is original in the sense that it is its author's own intellectual creation".[44] The court said that the elements of the works covered by the protection (in this case words in newspaper article) in isolation do not constitute an intellectual creation but "it is only through the choice, sequence and combination of those words that the author may express his creativity in an original manner and achieve a result which is an intellectual creation".[45]

In this judgment the Court for the first time tried to establish "a harmonised legal framework for copyright".[46] The upcoming decisions only confirmed its attempts to create one standard which will be horizontally apply to all subject matters covered by EU copyright directives. The five leading ECJ decisions (Infopaq International v Danske Dagblades Forening, Bezpečnostní softwarová asociace v Ministerstvo kultury[47], Eva-Maria Painer v Standard VerlagsGmbH[48], Football Association Premier League v QC Leisure and Karen Murphy v. Media Protection Services[49], Football Dataco v Yahoo![50]) have worked out basic frames of the EU originality standard.

First of all, the "author's own intellectual creation" was formulated as EU originality standard which horizontally applies to all subject matter covered by EU copyright directives.[51] Moreover, the author's own intellectual creation could be achieved through author's free and

[40] Infopaq International v Danske Dagblades Forening, para. 1.
[41] Ibid., para. 13-21.
[42] Ibid., para. 33.
[43] Ibid., para. 34-36.
[44] Ibid., para. 37.
[45] Ibid., para. 45.
[46] Ibid., para. 36.
[47] Case C-393/09, Bezpečnostní softwarová asociace v. Ministerstvo kultury (2010).
[48] Case C-145/10, Eva-Maria Painer v. Standard VerlagsGmbH (2011).
[49] C-403/08 and C-429/08, Football Association Premier League v. QC Leisure and Karen Murphy v. Media Protection Services (2011).
[50] Case C-604/10, Football Dataco v. Yahoo (2012).
[51] Infopaq International v Danske Dagblades Forening: Para 36.

creative choices which also include putting his personal stamp on the work.[52] Otherwise, when such expression is limited by rules either functional or technical, that does not leave any room for free and creative choices, no originality can be found.[53]

The deeper analysis of these cases can lead to the conclusion that the standard gave more attention to the qualitative rather than quantitative contribution to the originality.[54] For instance, it was confirmed by Infopaq case where the ECJ recognized protection to an eleven words extract[55] or findings in Painer case where protection was granted to a portrait photograph.[56] Based on this the one more principle of EU originality standard may be formulated: "In order to reach the required level of originality it suffices that authors make some free and creative choices and therewith put their personal stamp onto the work. However, skill and labor, even in significant amounts, are not conducive to these free and creative choices and therefore do not lead to the creation of a work possessing the required originality".[57]

1.2 Copyright protection of sport events as such

One of the five landmark decisions of ECJ, Premier League v QC Leisure, has confirmed the absence of protected subject matter in sports events (football games) under EU Copyright law.

The main question in this case was whether Football Association Premier League (the association which runs the Premier League, the leading professional football league competition for football clubs in England) could rely on its territorial licensing system for broadcast of football games and restrict UK bars and restaurants from showing Premier League matches using foreign satellite decoding devices instead of decoder cards authorized for UK market.[58]

The Court tried to evaluate whether provisions of Copyright, Design and Patent Act which protect right holders against foreign decoder devices is consistent with one of EU freedom – to provide services in the internal market (Art. 56 TFEU).[59] The restriction can be objectively justified by an objective of protecting intellectual property rights.[60] ECJ simplified intellectual

[52] Football Dataco v Yahoo: para.38; Infopaq International: para. 45; Bezpečnostní softwarová asociace v Ministerstvo kultury: para.50; Eva-Maria Painer v Standard VerlagsGmbH: para. 92.
[53] Football Association Premier League v QC: para. 98; Bezpečnostní softwarová asociace: para. 49; Football Dataco: para. 39.
[54] Lionel Bentley and Brad Sherman, Intellectual property law (Oxford University Press, 2014), p. 102.
[55] Infopaq International: paras. 47, 48, 51.
[56] Eva-Maria Painer.
[57] Margoni, The Harmonisation of EU Copyright Law: The Originality Standard, p.14.
[58] Football Association Premier League: para 35-50.
[59] Ibid, para 84-87.
[60] Ibid, para 87.

property question and in it analysis gave more concertation on what it consider to be a copyright work.[61]

The Court stated that FAPL "cannot claim copyright in the Premier League matches themselves, as they cannot be classified as works".[62] In its argumentation the Court used Infopaq findings: "the subject-matter concerned would have to be original in the sense that it is its author's own intellectual creation".[63] The justice underlined that sporting events could not be "regarded as intellectual creations classifiable as works" within the meaning of the Copyright Directive in particular it emphasized that this applies to "football matches, which are subject to rules of the game, leaving no room for creative freedom for the purposes of copyright".[64] ECJ went even further and indicated that EU law "does not protect sports event on any other basis in the field of intellectual property"[65]

Notwithstanding on the findings of ECJ it could be arguably whether the sports events have lack of free and creative choices. It was said that specific moves and tricks could require a number of free and creative choices that lay out of mere technical nature[66]. As a pure example could be football penalty kicks and football rules that put modes in which such kicks should be performed. On 25th anniversary conference of the IViR, which took place on July 2014, during one of the panel titled "*Who owns the world cup? The case for and against property rights in sports events"* prof. Lionel Bently was showed that a great deal of "creative choices" during penalty kicks can in fact be made by the player or even players.[67]

ECJ also leaves open space for debating whether some specific sport events which strictly follow a predefined script, in particularly synchronized swimming, step aerobics or rhythmic gymnastics, could be considered as artistic works worth copyright protection by virtue of their similarities with, for instance, choreographic works.[68]

Back to ECJ findings in Premier League v QC Leisure, the Court stated that "Nonetheless, 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

[61] van Eechoud, Along the Road to Uniformity Diverse Readings of the Court of Justice Judgments on Copyright Work, p.66.
[62] Ibid, Para 96.
[63] Ibid, para 97.
[64] Ibid, para 98.
[65] Ibid, para 99.
[66] Thomas Margoni, "The protection of sports events in the EU: Property, intellectual property, unfair competition and special forms of protection," IIC - International Review of Intellectual Property and Competition Law, 47(4) (2016): p. 5, accessed April 15, 2019, doi:10.1007/s40319-016-0475-8.
[67] Thomas Margoni, "Who owns the World Cup? The case for and against (intellectual) property rights in sports," Kluwer Copyright Blog, October 13, 2014, accessed April 15, 2019, http://copyrightblog.kluweriplaw.com/2014/10/13/who-owns-the-world-cup-the-case-for-and-against-intellectual-property-rights-in-sports/.
[68] Van Rompuy,Study on sports organisers' rights in the European Union, p. 30.

protection of works, and that protection can be granted, where appropriate, by the various domestic legal orders".[69] By such wording the Court left possibilities for national schemes for protection of sport events. It should be noted that there is only one possible way for member states to implement this type of protection either in the form of neighbouring rights or in other similar forms of protection.[70] Further observation whether sport events as such worth copyright protection and to which extent it is possible to implement will be discuss in the next chapters.

1.3 Neighbouring rights

In the area of neighbouring rights also known as related rights the primary international sources which defined protected subject matter are the Rome Convention[71] and the WIPO Performances and Phonograms Treaty.[72] The Rome Convention became the first international convention in which neighbouring rights for the protection of performers, producers of phonograms, and broadcasting organizations were recognized[73]. Article 3 of the Convention gives broad definitions for the type of persons it is protected: the performer, producer of phonograms and organization engaged in broadcasting.[74] These three categories are also known as "traditional" neighbouring rights. The WIPO Performances and Phonograms Treaty, on the other hand, contains broader list of subject matter to which it applies.[75] Article 9 of the Rome Convention expands the possibilities of the contracting states to grant protection to the other type of performances than those listed in Article 3.[76]

In the EU level neighbouring rights were first introduced by Directive 92/100/EEC on rental right and lending right and on certain rights related to copyright in the field of intellectual property.[77] In addition to the "traditional" neighbouring rights mandatory list for all the Member States also include one unique right named the film producer's right to the first fixation of a

[69] Football Association Premier League Ltd and others v QC Leisure, para 100.
[70] Margoni, The protection of sports events in the EU: Property, intellectual property, unfair competition and special forms of protection, p. 5.
[71] International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done at Rome on October 26, 1961, (1961), accessed April 15, 2019, https://wipolex.wipo.int/en/text/289795.
[72] WIPO Performances and Phonograms Treaty WIPO Performances and Phonograms Treaty, adopted in Geneva on December 20, 1996, (1996), accessed April 15, 2019 https://wipolex.wipo.int/en/text/295477.
[73] Mireille van Eechoud, Bernt Hugenholtz et al., Harmonizing European Copyright Law: The Challenges of Better Lawmaking, (Information Law Series 19, Alphen aan den Rijn: Kluwer Law International 2009), p.33.
[74] Rome Convention, Art. 3.
[75] WIPO Performances and Phonograms Treaty, Art. 2(b) (c).
[76] Rome Convention, Art. 9.
[77] Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property. (1992).

film.[78] No one of the directives dealing with neighbouring rights give more accurate definitions of subject matter than international treaties. There are argumentations that EU legislator has stepped away from precise formulation who qualifies as performer and what constitutes a performance in order not to interfere with the Rome Convention and national definitions[79]. Instead, the EU legislator makes references to the international treaties in various directives and by such way relies on the indirect harmonizing effect.[80]

The only possible related right which has appropriate connection to the sport events as such could be the right of performers. Accordingly to the Rome convention "performers" means actors, singers, musicians, dancers, and other persons, who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works".[81] It means that performers are protected by neighbouring rights only in case when they are performing or executing a "work" of authorship (work which is protected by copyright).[82] As was discussed above sport events could not be regarded as intellectual creations classifiable as works, that is why their performance or executions by athletes cannot be granted protection under a performers' right. Possibilities for the protection only occurs in the case when sport event follows predefined creative script such as in cases with figure skating or dance related sports etc.

The recent findings conducting in "Study on sports organisers' rights in the European Union" showed that sport events also do not meet criteria for protection by "traditional" related rights throughout all EU Member States. Nevertheless, there are types of protection which could be considered as neighbouring rights or rights related to copyrights in a few Member States including Greece, Italy, Hungaria, Bulagaria and France. Most of that forms can be defined as 'special' rights as far criteria for their classification is not so clear.[83] Only in Italy there is precise called neighbouring right which grant special rights to sports events organizers.[84] Such 'special' rights will be discussed in detail in the next chapters.

Closer examination of German Copyright Act has been shown that their Law contains special neighbouring right for performance organizers. Accordingly to the Copyright Act performance organizers can enjoy the same level of protection as performer which meanwhile

[78] Rental Directive, Art. 2.
[79] van Eechoud, Harmonizing European Copyright Law: The Challenges of Better Lawmaking, p.38.
[80] Computer Programs Directive, Rental Right Directive etc.
[81] Rome Convention, Art. 3(a).
[82] Paul Goldstein and Bernt Hugenholtz, International copyright law, Principles, law and practice (second edition Oxford University Press, Oxford 2010), p. 234.
[83] Ben Van Rompuy, "Study on sports organisers' rights in the European Union," T.M.C. Asser Instituut / Asser International Sports Law Centre Institute for Information Law - University of Amsterdam, (2014): p.30, accessed April 15, 2019, DOI: 10.2139/ssrn.2455313.
[84] Audiovisual rights in sports events An EU perspective, (Briefing March 2017): p.3, accessed April 15, 2019, http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599320/EPRS_BRI(2017)599320_EN.pdf.

include “exclusive right to fix his performance on a video or audio recording medium, exclusive right to reproduce and distribute the video or audio recording medium on which performance has been fixed”,[85] as well as “make his performance available to the public, broadcast his performance, unless the performance has been legally fixed on video or audio recording mediums which have been released or legally made available to the public and make his performance perceivable to the public by screen, loudspeaker or similar technical devices in a place other than that in which the live rendering takes place”.[86] But it was argued that such protection is only granted for the work protected by copyright. Such findings were presented by German Courts in few cases in which the Courts had denied application of performance organizer rights both directly (in a way that athletes are not performer artists) and in a way of analogy for organizers of sports events.[87]

It is also worth to mention, that the opposite conclusion had been found by Portuguese courts in respect to the right similar to the German performance organizer’s rights. Portuguese Code of Copyright and Related Rights contains provision which requires written consent of show’s impresario: “Performance of the work, in whole or in part, through transmission by audio or visual broadcasting, reproduction on phonograms or videograms, filming or presentation, shall require the author's written consent, in addition to authorization by the show's impresario and its performers”.[88] The basic element of the right, performance of the work, could lead to the conclusion that sports events do not enjoy this type of protection, similar to Germany case, because they do not constitute “work”. However, such presumption was argued by Portuguese scholars on basis, that such right is of customary nature and it protect organizers of performance because of great amount of investment and the risks they carry on. It follows from the economic prospective that the need of protection for organizers of a concert is totally the same as for the sport events organizers because the risk and investment is of the same amount or even larger.[89] The existence of such “spectacle right” in football matches was confirmed by Portuguese Supreme Court in 2009 in the way of the reference ratione temporis to the old law The right was confirmed even with the fact that the reform carried out in 2007 introduces

[85] Copyright Act of 9 September 1965 (Federal Law Gazette I p. 1273), as last amended by Article 1 of the Act of 1 September 2017 (Federal Law Gazette I p. 3346): Art. 77, accessed April 15, 2019, https://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html.
[86] Ibid., Art. 78(1).
[87] Thomas Dreier, “Creating New Property Rights on the Basis of General Legal Concepts - Without Limits?,” 2 JIPITEC 152, (2011): pp. 152-153, accessed April 15, 2019, https://www.jipitec.eu/issues/jipitec-2-2-2011/3091/jipitec%202%20-%20cd%20-%20dreier.pdf.
[88] Code of Copyright and Related Rights (No. 45/85, of September 17, 1985): art. 117, accessed April 15, 2019, https://www.wipo.int/edocs/lexdocs/laws/en/pt/pt002en.pdf.
[89] Margoni, The protection of sports events in the EU: Property, intellectual property, unfair competition and special forms of protection, p. 8.

Regulation of Physical Activities and Sports which totally removed the "spectacle right". By the applying of such right Supreme Court in his reasoning confirmed customary nature of performance organizer right.[90] Such findings may lead to the conclusion that sports events as such do not protect by any of four EU neighbouring rights.

1.4 The property concept of "house right"

Mostly sports events take place in athletic facilities like sport stadiums or tennis courts. The access to such facilities is controlled by walls, gates or doors. Such boundaries are placed for physically regulation of entrance to the venue. A person or entity who owns or operate the facility has right to exclude from access to the premises. Such right for 'exclusion' is a primary element of so known "house right".[91] It should be emphasized that "house right" does not constitute any legal doctrine with precise definition, instead it is a term which is used by scholars and courts as a property base right to allow access to the premises [92]

In the separate opinion of Advocate General Jääskinen in ECJ case UEFA, FIFA v European Commission a brief view for the property right was presented.[93] Advocate General emphasized that agreements for the right to access facilities as a rule are put in the place in order to determine rules and conditions under which spectators, sport clubs and broadcaster can view, film and broadcast event. Such observation is based rather on contractual relation than on a property rights.[94]

Access to the sport facilities is regulated by terms and conditions which impose rights and obligations for the persons when they enter into the premises. This right designate from property right which consist of the right to use a property and to exclude others from such use.[95]

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[90] Ibid.

[91] The Sport law review, Third edition ,ed. András Gurovits (Law Business Research, 2017), p.115, accessed April 15, 2019, https://thelawreviews.co.uk/digital_assets/4fc76748-909d-4d09-90a9-4210e62e0d10/The-Sports-Law-Review-ed-3---Book.pdf.

[92] Ben Van Rompuy, "Study on sports organisers' rights in the European Union," T.M.C. Asser Instituut / Asser International Sports Law Centre Institute for Information Law - University of Amsterdam, (2014): p.25, accessed April 15, 2019, DOI: 10.2139/ssrn.2455313.

[93] Cases C-201/11 P, C-204/11 P and C-205/11 P, Opinion of Advocate General Jääskinen Union of European Football Associations (UEFA), Fédération Internationale de Football Association (FIFA) v European Commission, (2012)

[94] Ibid., para. 36-40.

[95] Steve Cornelius, "The Legal Nature of Media Rights in Sport: Part 2," Global Sports Law and Taxation Reports 8, (2015): p.10, accessed April 15, 2019, https://www.academia.edu/11865814/The_Legal_Nature_of_Media_Rights_in_Sport_Part_2.

The sports events organizers as a rule are exclusive users of sport facilities, but they also could be the owners of them. The rules of the ownership of sport premises are varied from country to country and also depending of the type of sports events they carried on.[96]

Meanwhile, it is more common that premises are owned by municipal authorities. There are also possibilities that venues could be control by private companies rather than clubs or leagues that used such facilities. For instance, the survey shows that in Italian Serie A (major football league) only three football clubs from twenty is the owner of the stadium. In all others clubs the owners of the stadiums where they play their home matches are municipal authorities.[97] In such case clubs are being entered into lease agreements with the municipal authority or private company which is the owner of stadium or other facility. According to such contracts the clubs as a rule become exclusive users of the facilities during the whole period of the agreement or only for the event schedule. Such exclusive right gives the power to the sports events organizers to prohibit access for persons or media to the premise or to allow, subject to special terms and conditions.[98]

As was discussed, the sports events organizers can use dedicated location either on the property right or under contractual basis between the owner of the premise and sports events organizer. However, the main importance here is laying in exclusivity of such rights and theirs contractual transferability rather than the nature of such rights.[99]

The existence of such exclusive rights was confirmed by the courts of several Member States. More often they referred to them as a "house rights".[100] The legal nature of "house right" is based on widely known rights of modern legal tradition: property right and contract right. Based on "house right" the owner or occupier of premises can exercise his rights and decide who can enter into location and under what condition. In turn, fans, audiovisual and broadcaster companies have to accept these rules in order to have access to the event or even to exercise their job.[101]

All such rules, fees and conditions is written in the tickets terms and conditions that visitor accept when he purchase a ticket. The owners or organizers also posting the venue rules in places where it could be publicly available as information for attendance. For the broadcasting

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[96] Dreier, "Creating New Property Rights on the Basis of General Legal Concepts - Without Limits?", p.154.
[97] Cammy Anderson, "Stadium Ownership In Italy Compared To Other Leagues In Europe," Sempreinter, January 22, 2019, accessed April 15, 2019, https://sempreinter.com/2019/01/22/stadium-ownership-in-italy-compared-to-other-leagues-in-europe/.
[98] Gurovits, The Sport law review 2017, p.115.
[99] Adam Lewis, Jonathan Taylor, Sport: Law and Practice 2nd edition, Tottel Publishing, London 2008, p.1119.
[100] Cornelius, The Legal Nature of Media Rights in Sport: Part 2, p.10.
[101] Ibid.

organization and audiovisual companies the conditions are established through the special contracts which meanwhile include the terms and conditions to report the event, payment obligations and terms for broadcasting signal ownership.[102]

The terms and conditions for access to the ground which visitor accept when he purchase the ticket as a rule differ based on the type of events and economical significance for the organizers. In addition to the "classical" prohibition rules such as forbiddance for carrying any dangerous items it also include prohibition for recording devices.[103] For instance, Football Association (the governing body of association football in England) Match Tickets - Terms and Conditions prohibit "any equipment which is capable of recording or transmitting (by digital or other means) any audio, visual or audio-visual material or any information or data in relation to a Match or any aspect of it".[104] However, on the author's opinion, bear in mind that such rules have totally contractual nature, when sport fan has successfully exercised recording of the sport event partially or in whole through any recording devices (smartphone, tablet or GoPro camera etc.) and upload it to any online platform or livestreaming service (Periscope, Facebook live, Instagram live are at least the most interesting cases) he undoubtedly breached contractual obligations with the premises owner or sport event organizer, simultaneously the third party (for instance, livestreaming service) has not obligation under that contract. It means that online service provider, has no obligation to take down the recording of sport event from its service.[105]

Based on economic value, such infringement of sports events organizers rules and conditions in form of recording and uploading of illegal amateur footage has a very controversial impact. Whether one players of the market does not see any significant threat to the commercial interest of event organizers,[106] other players admit significance of such problem, nowadays.[107] Rapid development of technology brought into market both quality and available recording equipment, which can afford recording quality comparable to professional video camera and social services which open possibilities for the user to stream any event throughout the world

[102] Francisco Javier Cabrera Blázquez, Maja Cappello et al., "Audiovisual sports rights – between exclusivity and right to information", IRIS Plus 2016-2, European Audiovisual Observatory, Strasbourg (2016): p.13, accessed April 15, 2019, https://rm.coe.int/1680788a5d.
[103] Van Rompuy, Study on sports organisers' rights in the European Union, p.27.
[104] "FA Match Tickets - Terms and Conditions of Sale and Issue", Football Association , para 6.4, accessed April 15, 2019, file:///C:/Users/%D0%92%D0%BB%D0%B0%D0%B4/Downloads/fa-ticketing-conditions-of-sale-and-issue.pdf.
[105] Van Rompuy, Study on sports organisers' rights in the European Union, p.28.
[106] Green Paper: "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Value", Consultation Response by the Sports Rights Owners Coalition (SROC) (2013): pp. 9-11, accessed April 15, 2019, https://ec.europa.eu/digital-single-market/en/news/consultation-green-paper-preparing-fully-converged-audiovisual-world-growth-creation-and-values
[107] Dreier, "Creating New Property Rights on the Basis of General Legal Concepts - Without Limits?", p.154; Edelman, "From Meerkat to Periscope: Does Intellectual Property Law Prohibit the Live Streaming of Commercial Sporting Events?," pp. 475-477.

based on huge speed of internet access providing by mobile operators. As a result, it is opened new piracy market for illegal sport event livestreaming from the dedicated venues. Even more importance to this issue could be seen through the lack of legal protection to the sports events organizers due to the absence of third party effect. The potential of such threat will be discussed in details in the next chapters.

The response to the potential threat through the applicability of "house right" is laying in a proper drafting of the contracts both between the owner and event organizer as well as between event organizer and fans or companies which have an intention to attend the event. The second important factor is effective control of the premises which not always available for the sports events which take place in open areas (cycling, Formula 1 racing etc.). In such case the limited exclusivity rights could be reached through the authorities permits which are required to organize events in the open spaces.[108]

Case law available in EU Member States supports and even develops the concept of "house right". One of the first cases confirmed the "house right" in sports events was KNVB v NOS.[109] The Court ruled that Dutch Football Association (KNVB) organized theirs matches in such way that they are available to the spectators through the payment fee. The Court also emphasized that the "live' presents in the match could also be provided through the radio or television broadcast. Such possibilities may result in decreasing of live attendance of the match concerned. Based on this, KNVB and sport clubs is entitled to provide permission for the broadcasting through the payment of the negotiable fee or prohibit such activities in the absence of the payment. KNVB and sport clubs was granted to attach restriction for access to the match premises based on their "house rights" under such premises.[110] On the other hand, mere fact of informing the public about developments of the game or reports after the match was not covered by "house right".[111]

This rule later was modified when one of the leading football club Feyenoord infringed the KNVB rules and started to market its media rights to all its home games in De Kuip stadium by itself and did not share the income from such rights with the KNVB. The KNVB claimed that media rights of the matches being played under the auspices of the KNVB collectively belonged to the league and all the clubs.[112] The Court revised KNVB v NOS case and ruled that the responsibility to organize matched mostly lay with the home clubs and that the home clubs carried economic risk of the matches. Based on this the Court concluded that the media rights for

[108] Van Rompuy, Study on sports organisers' rights in the European Union, p.28
[109] Hoge Raad, 23-10-1987, nr. 12916: KNVB v NOS, (1987)
[110] Cornelius, The Legal Nature of Media Rights in Sport: Part 2, p.10.
[111] Ibid.
[112] C01/255HR, Hoge Raad, KNVB v Feyenoord, 23 May 2003, NJ 2003, 494, (2003).

the football matches belong to the home clubs. The Court also emphasized that the media rights also do not belong to the players and that the granting of media rights do not infringe the image rights of the players because they participate in the matches as a members of the team.[113]

The existence of "house right" in sports events was also confirmed in case law of German Federal Supreme Court. In Hörfunkrechte case the court stated that sport club as the occupier of premises may enjoy the right of admission and also set the payment for the enter to the premises. Furthermore it is also include power to grant access to the media and charge the fee for providing radio rights and television rights.[114] In the latter case Hartplatzhelden the court clarified the rules for the broadcasting a short video clips which depict only few scenes from the match. The Court stated that such action does not consider as competition with the sport leagues (in this case amateur football league) and also it is not infringe any other rights of the league even they are posted in the internet. But it should be noted that the Court reminded that sport league may protect through the clubs their right for filming sports events on the basis of clubs "house right". In this case plaintiff did not dispute any violations of "house right" due to the fact the amateur clubs had no right of ownership of the football stadiums and that the real owner did not claim any objection against fans recording of sports events.[115]

To sum up, ECJ has developed harmonized legal framework for copyright through the provision to the national courts interpretation of Community law. The Court formulated EU originality standard as the "author's own intellectual creation" and confirmed that such standard horizontally applies to all subject matter covered by EU copyright directives. One of its decisions ruled out that sport event cannot be regarded as intellectual creations classifiable as works within the meaning of the Information Society Directive, in particular the Court emphasized that this applies to football matches, which are subject to rules of the game which mean that they leaving no room for creative freedom for the purposes of copyright. Moreover sports events also do not meet criteria for protection by "traditional" related rights throughout all EU Member States. In some jurisdiction protection for sports events organizers are granted through so-called "house right" which in its nature is based on property rights and contractual obligations which in turn is of controversial nature due to the absence of third party effect under such contacts.

[113] Cornelius, The Legal Nature of Media Rights in Sport: Part 2, p.11.
[114] BGH 8 November 2005, KZR 37/03, Hörfunkrechte (2005) para 26-29.
[115] Dreier, "Creating New Property Rights on the Basis of General Legal Concepts - Without Limits?", p.154.

2. Rights attached to the recording of sports events

Audiovisual sport rights are one of the most important revenue streams for sports events organizers. Protection of sports media rights is regulated by complex copyright rules where broadcasting rights became on the most importance. The global value of sports media rights reached $49.533billion in 2018.[116] For the next five years expected annual growth rate by revenue for digital media rights in sport calculated in 11.5% when for TV rights 3.2%.[117] The broadcasting rights for 2016 Olympic Games in Rio costed $4.1 billion and represented 74% of International Olympic Committee revenue sources.[118]

As could be seen from these data, media and TV pay tremendous sums for the exclusive right to broadcast live sporting events. The example of International Olympic Committee confirms the fact that the income from broadcasting rights became the biggest sources of revenue for sport organizations. All this sums then are transferred for developing of sporting events, coverage the expense of the clubs and federations and one of the most significance developing of sport at grassroots level.[119]

Over the past few years, the new trend of decreasing of the price for media and broadcasting rights has appeared. For instance, the new deal for domestic TV rights in English Premier League for 2019-2022 seasons were sold in auction for £4.4 billion in comparison with the price £5.1 billion for 3 year contract 2016-2019.[120] The reasons for such changing was the deal between two major sport TV channels in UK aimed at combining the base of their subscribers'.[121] Among other reasons for this deal between TV operators was increasing of illegal live streaming through the livestreaming sites and add-ons for satellite receivers.[122] One

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[116] "SportBusiness Consulting report finds global value of sports media rights reached $49.5bn in 2018" SportBusiness Media, 15th November 2018, accessed April 15, 2019, https://media.sportbusiness.com/news/sportbusiness-consulting-releases-new-report-analysing-the-global-media-rights-landscape-in-2018/.

[117] "Sports industry: lost in transition?PwC's Sports Survey 2018," September, 2018, p.5 accessed April 15, 2019, http://strivesponsorship.com/wp-content/uploads/2018/10/PwC-Sports-and-Esports-Survey-2018.pdf.

[118] IOC Marketing: Media Guide, Olympic Games Rio 2016, accessed April 15 2019, https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Games/Summer-Games/Games-Rio-2016-Olympic-Games/Media-Guide-for-Rio-2016/IOC-Marketing-Media-Guide-Rio-2016.pdf.

[119] "Broadcasting & Media Rights in Sport," WIPO, accessed April 15 2019, https://www.wipo.int/ip-sport/en/broadcasting.html.

[120]"Premier League raises less from TV rights auction," BBC News,14 February, 2018, accessed April 15, https://www.bbc.com/news/uk-43052024.

[121] "Get BT Sport on your Sky box," Sky, accessed April 15 2019, https://www.sky.com/help/articles/get-bt-sport-on-sky.

[122] Aaron Brown "Kodi Box WARNING - Threat to Sky TV as Premier League fans move to free online streams," Express, July 5, 2017, accessed April 15 2019, https://www.express.co.uk/life-style/science-technology/824454/Kodi-Box-Sky-Sports-Premier-League-Watch-Free-Live-Stream.

of the last surveys showed that among top threats of greatest concerns for sport industry the third place is occupied by consumers' decreased willingness to pay for sports content which has strong connection with the fifth place - threat of piracy/illegal streaming.[123] In such circumstances broadcasting organizations and sport event organizers have argued for the better legal protection of theirs rights at international level in order for tackling signal and livestreaming piracy.[124]

In order to understand what legal instrument are available for the sports events organizers and broadcast organizations regarding their media content, this chapter will focus on the rights they poses over their audiovisual recording of sports events.

2.1 Copyright protection of audiovisual recording of sports events

As was broadly discussed in the Chapter 1, EU law and national laws of 28 Member States do not protect sports events as such under copyright or related rights. Meanwhile it does not mean that sports events organizers cannot rely on copyright and neighbouring rights protection of theirs economical and commercial interests.

Article 2 of the Berne Convention defines that "The expression "literary and artistic works" shall include […] cinematographic works".[125] The ECJ in it decision Premier League v QC Leisure noted "authors can rely on the copyright which attaches to the works exploited within the framework of those broadcasts" and "FAPL can assert copyright in various works contained in the broadcasts, that is to say, in particular, the opening video sequence, the Premier League anthem, pre-recorded films showing highlights of recent Premier League matches, or various graphics".[126] Such ruling confirmed that recording of sports events could met the threshold of originality and become subject matter protected by copyright law.

Cinematographic works could be protected by copyright law when they met originality standard defined by ECJ, specifically, when they are "author's own intellectual creation".[127] In order to satisfied standard of originality audiovisual recording should contain "free and creative choices and the personal stamp of the author".[128]

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[123] "Sports industry: lost in transition?PwC's Sports Survey 2018," September, 2018, p.14 accessed April 15, 2019, http://strivesponsorship.com/wp-content/uploads/2018/10/PwC-Sports-and-Esports-Survey-2018.pdf.
[124] "Broadcasting & Media Rights in Sport," WIPO, accessed April 15, https://www.wipo.int/ip-sport/en/broadcasting.html.
[125] Berne Convention.
[126] Football Association Premier League v QC Leisure, para 149.
[127] Infopaq International v Danske Dagblades Forening.
[128] Margoni, The Harmonisation of EU Copyright Law: The Originality Standard, pp.13-14.

To understand what requirements are crucial for establishing copyright protection in audiovisual recording of sports events, which in fact do not classify as a subject matter of copyright, one of the ECJ landmark rulings could be serve as example.

In ECJ Case Eva-Maria Painer the question laid over the use and modification of portait photography. It was argued whether portrait photography poses lesser degree of copyright protection or does not poses copyright protection against adaptation at all, as a result of their "realistic image".[129] The Court stated that "the photographer can make free and creative choices in several ways and at various points in its production".[130] The justice further divided the process of making portrait photography into three stages.

According to the Court ruling "In the preparation phase, the photographer can choose the background, the subject's pose and the lighting".[131] Using the method of analogy and taking into account that photographer and director make similar decisions in their work, it could be saying that the director of the audiovisual recording of the sport event also make a decision about background and lightning in his preparation for the recording. Such decision could result in the future quality of the footage which is of paramount importance for the consumers.

The next step explained by the Court "When taking a portrait, photograph can choose the framing, the angle of view and the atmosphere created".[132] By this stage the director of audiovisual recording of sport event may chose the framing and the angle of the cameras, but actually not by himself personally. The recording of major sports events consist of dozens of cameras located in a various places. For instance during EURO 2016 the total amount of cameras which were used per stadium constituted 46.[133] In such circumstances majority of cameras are operated by cameramen and primary purpose of the director is to give clear instruction what and how should be filmed during the event. Such great amount of cameras are placed in stadium or others sport premises not only for filming the game but also to convey the atmosphere of the game by the way, for example, showing the emotions of spectators during the event.

The third and the last stage which was mention by the Court "when selecting the snapshot, the photographer may choose from a variety of developing techniques the one he wishes to adopt or, where appropriate, use computer software".[134] During this stage the notion of "author's own intellectual creation" could be shown on significant level. The director of audiovisual recording

[129] Mireille van Eechoud, "Along the Road to Uniformity Diverse Readings of the Court of Justice Judgments on Copyright Work," 3 (2012) JIPITEC (2012): p.67, accessed April 15, 2019, https://www.jipitec.eu/issues/jipitec-3-1-2012/3322/eechoud.pdf.
[130] Eva-Maria Painer v. Standard VerlagsGmbH, para. 90.
[131] Ibid., para. 91.
[132] Ibid.
[133] James Temperton, "Fibre and plywood: this is how Euro 2016 is broadcast to the world," Wired, 22 June 2016, accessed April 15, 2019, https://www.wired.co.uk/article/euro-2016-how-uefa-broadcasts.
[134] Eva-Maria Painer v. Standard VerlagsGmbH, para. 91.

in live sport event by his active involvement in real time selects frames from the different cameras that will go on the air.[135] As was defined in ECJ Premier League v QC Leisure the graphics, comments, opening sequences and other animation content are also constitute the part of sport event feed. The result of the final work is laying into combinations of all elements which are operated by the director decisions. The Court noted that "By making those various choices, the author of a portrait photograph can stamp the work created with his 'personal touch'".[136]

The conclusion of the Court was following "as regards a portrait photograph, the freedom available to the author to exercise his creative abilities will not necessarily be minor or even non-existent"[137] only because to the mere fact that the subject matter is a portrait photography as a "realistic image". With the parallel to the audiovisual recording of sport events the author's own intellectual freedom and personal stamp also will not be of minor importance in his recording as a set of realistic images.[138]

The possibilities of not meeting requirements for the EU originality standard occurred when such audiovisual recording of sport event is conducted through the one or few cameras and where director's own personal stamp is absent due to the lack of his creative and original decisions which is an example of amateur sport filming. For instance, Swedish Court of Appeal for Southern Norrland in its ruling whether broadcast or parts of them of ice hockey match was protected as a literary or artistic work stated, that broadcast was not protected as a work due to the fact that it was ruled by the events of the games. It was mentioned that ice hockey broadcast was made by using four cameras, image producer and three cameramen. Cameras showed not only the game but other events on the stadium and audience as well. The cornerstone of this decision was that it divided opinions of the judges' three to two. Majority of the judges voted for the absence of protection as a work. Such decision goes to the fact that assessment is subjective and uncertain.[139] However, even audiovisual work does not reach a threshold for the EU originality standard protection, the producer of the audiovisual work can rely on a specific EU neighbouring right – the right of the first fixation of the film.

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[135] "Directing Live Events," SVNS, accessed April 15, 2019, http://www.svnsportsbroadcasting.com/production-broadcast/53-directing-live-events.
[136] Eva-Maria Painer v. Standard VerlagsGmbH, para. 92.
[137] Ibid., para. 93.
[138] Thomas Margoni, "The protection of sports events in the EU: Property, intellectual property, unfair competition and special forms of protection," IIC - International Review of Intellectual Property and Competition Law, 47(4) (2016): p. 12, accessed April 15, 2019, doi:10.1007/s40319-016-0475-8.
[139] Eleonora Rosati , "Swedish Supreme Court has ruled that sport broadcasts are not protected by copyright," IPKat, December 26, 2016, accessed April 15, 2019, http://ipkitten.blogspot.com/2016/12/swedish-supreme-court-has-ruled-that.html.

According to the Term Directive "the principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors".[140] Bear in mind that cinematographic work has a difficult process of creation, it is difficult to define who is the main author of the work. The large amount of creative persons such as screenplay writers, composers of the music and producers participate in creation of cinematographic work.[141] By such provision the key creative role of a director was confirmed through his recognition as one of the author in all Member States.

As a rule, commercial author's rights are fixed to the audiovisual or film producer on the contractual basis or by the law. In the sports events such rights typically belong to the organizer of such event. For instance, in English Premier League the owner of economic rights to the audiovisual recording of the football matches is FAPL. FAPL is responsible for "the filming of Premier League matches and exercising in their regard television broadcasting rights, that is to say, rights to make the audiovisual content of sporting events available to the public by means of television broadcasting".[142] Any acts of reproduction, distribution or communication to the public can be done only through the authorization of right holder in order to avoid copyright infringement.[143]

2.2 Film producers' first fixation of a film

In addition to three "classical" neighbouring rights protection of the performer, producer of phonograms and organization engaged in broadcasting provided in Rome Convention,[144] EU legislators introduced additional unique related right named the film producer's right to the first fixation of a film.[145] The EU Rental Right Directive gives definition to the film as "a cinematographic or audiovisual work or moving images, whether or not accompanied by sound".[146] In case of presence originality in the film it will be protected in EU by both copyright as a cinematograph work[147] and related right as the first fixation of a film. The reasons for

[140] Term directive, Art 2(1).
[141] Copyright: report highlights successful EU-wide recognition of directors as "authors" of films, IP/02/1824, Brussels, 9th December 2002, accessed April 15, 2019, http://europa.eu/rapid/press-release_IP-02-1824_en.htm?locale=en.
[142] Football Association Premier League v QC Leisure, para. 31.
[143] Francisco Javier Cabrera Blázquez, Maja Cappello et al., "Audiovisual sports rights – between exclusivity and right to information", IRIS Plus 2016-2, European Audiovisual Observatory, Strasbourg (2016): p.17, accessed April 15, 2019, https://rm.coe.int/1680788a5d.
[144] Rome Convention, Art. 3.
[145] Rental Rights Derective, Art 3(d).
[146] Ibid., Art 1(c).
[147] Berne convention, Art. 2.

additional neighbouring right protection for producers were specified in Recitals to the Rental Right Directive. Such protection was added for secure the investment because "investments required particularly for the production of phonograms and films are especially high and risky".[148]

The neighbouring right for the first fixation of the film is independent right from copyright protection of cinematographic work. The Term Directive grants different duration for protection for such rights. "The term of protection of cinematographic or audiovisual works shall expire 70 years" after the death of the principal director or other co-author.[149] In fact, "The rights of producers of the first fixation of a film shall expire 50 years after the fixation is made".[150] InfoSoc Directive gives to the film producer "the exclusive right to authorize or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part […] in respect of the original and copies of their films".[151] In addition Directive provides "exclusive right to authorize or prohibit 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"[152] (such known as "on-demand"), but in the same time EU legislator does not provide protection with the broader right of communication to the public.[153]

In the case of audiovisual recording of sports events with the absence of copyright protection over such recording due to the high standard of authors' own creative choices and personal stamps, the producer of such recording can claim his neighbouring rights of the first fixation of the film.

2.3 The broadcast of sports events

Under the Rome Convention broadcasting organizations have exclusive rights to authorize or prohibit rebroadcasting, 'fixation' (recording), reproduction and communication to the public of their broadcasts.[154] Convention also defined 'broadcasting' as "the transmission by wireless means for public reception of sounds or of images and sounds".[155] The broadcast signal with attached to it audiovisual recording or cinematographic work is protected by neighbouring right. Such right is operated independently from copyright content which could be contained in

[148] Rental Rights Derective, Retical 5.
[149] Term Directive, Art. 2.
[150] Ibid., Art. 3(3).
[151] InfoSoc Directive, Art. 2.
[152] Ibid., Art. 3(2).
[153] Ibid., Art. 3.
[154] Rome Convention, Art. 13.
[155] Ibid., Art 3(f).

broadcasting signal.[156] It means that broadcasting organization can rely on related right even it is transmitted the content without copyright protection.[157] As was noted in ECJ case Premier League v QC Leisure broadcaster can invoke its related right even if transmitted recording does not meet criteria for protection by copyright as cinematographic work nor by any of neighbouring rights.[158]

In the EU level the broadcasting rights are protected by the Rental Directive, the Satellite Directive[159] and the Information Society Directive.[160] The Rental Directive broadens the scope of protection granted by the Rome Convention in way of specifying the ways of transmitting the signal "by wire or over the air, including by cable or satellite".[161] Moreover Directive provides broadcasting organizations with the right to "authorize or prohibit the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts"[162] and specifies exclusive right for distribution of fixations of their broadcasts.[163] The Information Society Directive added to reproduction rights of broadcast organizations "to include temporary digital copies and also introduces a right of making available online".[164]

There is no precise definition about what is broadcasting organization. It can be said that is a company that organize through the wire, cable or satellite transmission of audiovisual recordings to the end user for the public reception.[165] With regard to the sports events, in a few cases it is a possibility that sport club or league may operate as broadcasting organization, but more frequently sports events organizers sale theirs rights for broadcasting of sports events on contractual basis to the separate broadcasting company.[166]

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[156] Margoni, The protection of sports events in the EU: Property, intellectual property, unfair competition and special forms of protection, p. 16.
[157] Audiovisual rights in sports events An EU perspective, (Briefing March 2017): p.4, accessed April 15, 2019, http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599320/EPRS_BRI(2017)599320_EN.pdf.
[158] Football Association Premier League v QC Leisure, para. 150.
[159] Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, (1993).
[160] 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, (2001)
[161] Rental Directive, Art. 7.
[162] Ibid., Art. 8(3).
[163] Ibid., Art 9(d).
[164] Paul Goldstein, P. Bernt Hugenholtz, International Copyright: Principles, Law, and Practice 3rd edition , (New York: Oxford University Press, 2013), p. 353, (cited from Margoni, The protection of sports events in the EU: Property, intellectual property, unfair competition and special forms of protection, p. 15).
[165] Margoni, The protection of sports events in the EU: Property, intellectual property, unfair competition and special forms of protection, p. 15.
[166] Ibid.

As was explained by ECJ in case Premier League v QC Leisure "two categories of persons can assert intellectual property rights relating to television broadcasts […] namely, first, the authors of the works concerned and, secondly, the broadcasters".[167] Further the Court was mentioned that "broadcasters can invoke the right of fixation of their broadcasts […], the right of communication of their broadcasts to the public […] or the right to reproduce fixations of their broadcasts".[168]

Illegal retransmission of the broadcast through the internet constituted infringement of copyright or related rights. In this regard two cases of ECJ should be considered: C More Entertainment v Linus Sandberg[169] and ITV v TVCatchup Ltd[170]. Both judgments gave interpretation of Article 3 Information Society Directive.[171] In TVCatchup case two main questions were raised. First, whether "the right to authorise or prohibit a "communication to the public of their works by wire or wireless means" in Article 3(1) extend to a case where an organisation other than the original broadcaster provides a service".[172] Second, whether "individual subscribers within the intended area of reception of the broadcast may log on to the third party's server and receive the content of the broadcast by means of an internet stream".[173] In its findings the Court stated that the main objective of Copyright Directive is "to establish a high level of protection of authors, allowing them to obtain an appropriate reward for the use of their works, including on the occasion of communication to the public".[174] For the further examination ECJ decided to explain meaning of "communication" and "to the public" separately. The Court notes that "Directive does not define the concept of 'communication' exhaustively".[175] Further, ECJ emphasized "by regulating the situations in which a given work is put to multiple use, the European Union legislature intended that each transmission or retransmission of a work which uses a specific technical means must, as a rule, be individually authorised by the author of the work in question" this findings "supported by Articles 2 and 8 of Directive 93/83, which require fresh authorisation for a simultaneous, unaltered and unabridged retransmission by satellite or cable of an initial transmission of television or radio programmes containing protected works, even though those programmes may already be received in their

[167] Football Association Premier League Ltd v QC Leisure, para. 148.
[168] Ibid., para. 150.
[169] Case C-279/13, C More Entertainment AB v Linus Sandberg, (2015).
[170] Case C-607/11, ITV Broadcasting Ltd, ITV 2 Ltd, ITV Digital Channels Ltd, Channel 4 Television Corporation, 4 Ventures Ltd, Channel 5 Broadcasting Ltd, ITV Studios Ltd v TVCatchup Ltd, (2013).
[171] InfoSoc directive.
[172] ITV Broadcasting Ltd. v. TVCatchup Ltd., para. 18.
[173] Ibid.
[174] Ibid., para. 20.
[175] Ibid., para. 22.

catchment area by other technical means, such as by wireless means or terrestrial networks".[176] From such interpretation the Court went to the conclusion that TVCatchup retransmission of broadcast which uses a specific technical means others from original communication (livestreaming through the internet) falls within "communication" under the Information Society Derective.[177] The Court also defined the exception to the 'communication': "mere technical means to ensure or improve reception of the original transmission in its catchment area does not constitute a 'communication' within the meaning of Article 3(1) of Directive" and admitted that TVCatchup intervention did not maintain or improve the quality of the transmission.[178] In order to define 'communication to the public' the Court cited case law and went to the conclusion "that the term 'public' in Article 3(1) refers to a fairly large number of persons".[179] ECJ stated that retransmission over the internet cover all persons resident in UK and those people may access the protected works at the same time, in the context of the 'live streaming' of television programmes. "Each of those two transmissions must be authorised individually and separately by the authors concerned given that each is made under specific technical conditions, using a different means of transmission for the protected works, and each is intended for a public".[180] The findings of the Court confirmed that illegal retransmission of the broadcast through the internet by stream technology constitute copyright infringement.

In the other ECJ case C More Entertainment v Linus Sandberg the Court was asked whether the insertion of a hypertext link on an internet site constitutes an act of communication to the public and "may the Member States give wider protection to the exclusive right of authors by enabling "communication to the public" to cover a greater range of acts than provided for in Article 3(2) of Copyright Directive".[181] In the main proceeding C More Entertainment (a pay-TV station) which broadcast on its site live hockey matches for payment of fee brought the claim against Mr. Sandberg who on his internet site provided the links for the live broadcast of two hockey matches which bypassed the paywall put in place by C More Entertainment.[182] Swedish court "took the view that it does not follow from either the wording of Directive 2001/29 or the case-law of the Court that the insertion of a hypertext link on an internet site constitutes an act of communication to the public".[183] In addition, Swedish court noted that "the relevant national legislation provides for wider related rights than those set out in Article 3(2) of

[176] Ibid., para. 24-25.
[177] Ibid., para.28.
[178] Ibid., para. 30.
[179] Ibid., para. 32.
[180] Ibid., para. 35,39.
[181] C More Entertainment AB v Linus Sandberg, para. 19,21.
[182] Ibid., para. 10,12.
[183] Ibid., para. 19.

Directive 2001/29 since, unlike that provision, the protection conferred by Swedish law is not restricted to acts of making works available 'on demand'"[184]. By its answering ECJ sent a copy of the judgment in Svensson and Others[185] where the Court examined the question of insertion of a clickable hypertext link on an internet site. According to that decision "the provision of clickable links to protected works must be considered to be 'making available' and, therefore, an 'act of communication', within the meaning of Article 3(1) of Copyright Directive"[186]. The Court noted that "act of communication such as that made by the manager of a website by means of clickable links are aimed at all potential users of the site managed by that person, that is to say, an indeterminate and fairly large number of recipients".[187] However, in order to be covered by the "concept of "communication to the public within meaning of article 3(1) of Copyright Directive must be directed to the new public, that is to say, at a public that was not taken into account by the copyright holders when they authorized the initial communication to the public".[188] The Court came to the conclusion that providing clickable hyperlinks to the protected works constitute the act of 'communication to the public' within meaning of Article 3(1) only if "clickable link makes it possible for users of the site on which that link appears to circumvent restrictions put in place by the site on which the protected work appears in order to restrict public access to that work to the latter site's subscribers only, and the link accordingly constitutes an intervention without which those users would not be able to access the works transmitted".[189] With regard to the second question the ECJ stated that "It follows from recitals 23 and 25 in the preamble to that directive that the EU legislature sought, firstly, to harmonise further the author's right of communication to the public and, secondly, to overcome the legal uncertainty regarding the nature and the level of protection of acts of on-demand transmission by providing for harmonised protection at Community level for that type of act".[190] The Court emphasized that no one provision of Copyright Directive states that EU legislator sought to prevent or remove any differences as regard to the protection which the Member States may grant to the holders of broadcasting rights referred to in Article 3(2)(d).[191] ECJ further cited recital 16 to Directive 2006/115 where it is said that Member States are free to provide more protection for owners of related rights in respect of broadcasting or communication to the public.[192] The justice

[184] Ibid.
[185] Case C-466/12, Nils Svensson, Sten Sjögren, Madelaine Sahlman, Pia Gadd v Retriever Sverige AB, (2014).
[186] Ibid., para. 20.
[187] Ibid., para. 22.
[188] Ibid., para. 24.
[189] Ibid., para. 31.
[190] C More Entertainment AB v Linus Sandberg, para. 30.
[191] Ibid., para. 31.
[192] Ibid., para. 33.

came to the conclusion that Copyright Directive cannot be interpreted as reducing rights granted by Rental Directive.[193] Such ruling confirmed the right of Member State to broaden their protection with regard to the communication to the public based on specific circumstances.

To sum up audiovisual recording of sports events could be protected by copyright when they met originality standard defined by ECJ. However, it is possible not to meet this threshold when such recording does not contain author's own personal stamp and creative choices. The requirements for the granting copyright protection over audiovisual recordings of sports events are not clear and generate uncertainty in this matter. If the author of recording cannot claim copyright in his work, he could invoke to the special neighbouring protection granted by EU legislator. Under the film producer's right to the first fixation of a film, producer has exclusive right to authorise reproduction by any means and in any form in respect of the original and copies of their films. The broadcast organizations can also enjoy protection over theirs transmitted signal by neighbouring right. As was explained by the ECJ, illegal retransmission of broadcasting signal through the internet either by streaming technology or by clickable hyperlinks constitute an infringement of broadcaster's copyright or related rights.

[193] Ibid., para. 36.

3. Live streaming infringements of sports events

3.1 Methods of live streaming

In order to fully examine problem of illegal live streaming of sports events and sport broadcast it is crucial to clearly understand what live streaming technology is, what kinds of methods are using for illegal retransmission of sport events and how it typically operates.

Streaming is "video or audio content sent in compressed form over the internet".[194] The main feature of streaming technology that it is does not require the content to be saved in user's device hard disk as a classical download technology. The data is automatically deleted after you played it.[195] Video streaming can be dived into live streaming and streaming on-demand. Through the live streaming all users receive content simultaneously in real time. In turn, streaming on-demand can be watched by the user whenever he wants. Playback of on-demand video is not synchronized between different users.[196]

There are a lot of methods for illegal streaming of content. Among them "Unicast" is known as basic form for content distribution. By this method the content is transmitted from the server to each individual user.[197] From the user side it is required only a media player (such as Windows Media Player or VLC) installed on the device for the converting into audiovisual format. Such method is costly to maintain due to the bandwidth intense because this method require creation of separate version of streaming for each viewer. As a result such sites were typically operated under subscription paid basis.[198]

Another method of distribution content through streaming is peer-to-peer networks (P2P). The main feature of such method of streaming which differ it from unicast is lying in the absence of the core service for the distribution needs. When only one user is responsible for uploading of the stream each other user (known as a 'peer') shares responsibility for the distribution. The quality of transmission is directly related to the number of online peers. The more users involved in the sharing the larger package of data exchanged which result in the better quality of the

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[194] Streaming definition, Whatis.com, accessed April 15,2019, https://whatis.techtarget.com/definition/streaming-media.

[195] Sam Costello, "Internet Streaming: What It Is and How It Works," LifeWire, December 17, 2018, accessed April 15, 2019, https://www.lifewire.com/internet-streaming-how-it-works-1999513.

[196] Yong Liu, Yang Guo and Chao Liang "A survey on peer-to-peer video streaming systems," Article in Peer-to-Peer Networking and Applications , March 2008, p.19, accessed April 15,2019, DOI: 10.1007/s12083-007-0006-y.

[197] Rafael Ferraz Vazquez, "Sport and broadcasting rights: adding value," WIPO Magazine, April 2013, accessed April 15, 2019, https://www.wipo.int/wipo_magazine/en/2013/02/article_0005.html.

[198] Update on Digital Piracy of Sporting Events 2011, Submitted in Call for Evidence to Independent Review of Intellectual Property and Growth, NetResult, London (2011), p. 17-18, accessed April 15, 2019, https://www.wipo.int/export/sites/www/ip-sport/en/pdf/piracy_report_2011.pdf.

stream.[199] The central server (so-called 'tracker') is involved only in sorting and managing of the channels and does not play any role in distribution of the content.[200] From the economical point of view such method is cost saving both for uploaders of content and end user. The "broadcaster' is need a PC-TV tuner card which transmit television signal on computer in turn, the end user only requires a high-speed internet access and P2P media player (could be also VLC or ACE player).[201]

Two of the most efficient services for streaming through P2P technology are SopCast (SOP – streaming over peer-to-peer) and AceStream. Both of the applications use their own engines and browser plug-in which is freely downloadable through theirs websites on any operation system (including Windows, Linux, Android, MacOs). Users can access to the illegal streams on booth platforms through the hyperlinks which is freely accessible on linking sites. It is also possible to such streams through the site if theirs plug-ins are installed.[202] Such easy to use procedure resulted of tremendous wide spreading these services among users.

Simultaneous broadcast method or Simulcast means broadcasting of the event simultaneously over different medium.TV operators are using simulcast in form of licensed live online broadcast which at the same time follow the televised event. While TV operators using simulcast to provide their service for more amount of users which attract additional revenue and added value to broadcasters, it is also possible to attract illegal retransmissions of televised events. Basically TV companies conclude contacts with outsource specialist for providing streaming services. Such specialists also offer different security packages to protect the stream. Often such streams are hacked by pirates and spreading over the internet. Also, frequently such online broadcasts are re-distributed by legitimate users who stream them through P2P services. In order to protect theirs broadcasts TV operators also using geo-blocking restrictions which is easy to bypass by using proxy servers (VPN) and effectively change your IP address.[203]

One of the most recent methods for illegal livestreaming is illicit IPTV devices (set top boxes). Illicit IPTV devices turn consuming of illegal streaming from web-based viewing on PCs or laptops toward high-quality viewing experience through the app and device-based viewing connected to TVs. By their nature IPTV devices is legal hardware (for instance Nvidia Shield or Amazon Firestick) which are using to provider for the end consumer TV services through the

[199] Vazquez, "Sport and broadcasting rights: adding value".
[200] Update on Digital Piracy of Sporting Events 2011, Submitted in Call for Evidence to Independent Review of Intellectual Property and Growth, p. 20.
[201] Michael J. Mellis, Internet Piracy of Live Sports Telecasts, 18 Marq. Sports L. Rev. 259 (2008), p.259, accessed April 15, 2019, http://scholarship.law.marquette.edu/sportslaw/vol18/iss2/2.
[202] Update on Digital Piracy of Sporting Events 2011, Submitted in Call for Evidence to Independent Review of Intellectual Property and Growth, p. 21.
[203] Ibid., pp.23-24.

subscription or other models. In fact such top boxes, often based on Android operation system, give possibilities to install illicit apps and/or illicit add-ons that enable aces to illegal streams. When illegal software is preinstalled such devices are commonly refereed as "fully-loaded".[204]

The last method which constitutes a lot of concern for the right holders is live streaming through the mobile phones in real time using such mobile applications as Twitter's Periscope, Facebook live, Instagram Live etc. These mobile applications are free for consumers and can be easily and legally installed through the smartphone's app store. Users are using mentioned applications to live stream everything around including sports events.[205] Apps provide users with possibility to save video for re-watch by other users up to 24 hours. In case of live streaming of sports events using such applications open for the consumers opportunity to stream video of sports events from television or, what is more controversial, from the venue of the sport event.[206]

From the operational side of view basic ecosystem of free illegal live streaming involves as a rule five main parties. The relationships between them are as follows. The content is acquired by media providers and stream to the media server. The media provider could be a one person who sends his video stream using different types of software or a big company, for instance broadcasting station. Such illegal live streamer could rebroadcast for free in real time content which he obtained through the subscription to paid services.[207]

Channel Providers are companies which provide the infrastructure in order to share live stream. As a rule channel providers operate media servers which receives live video stream from media providers. After receiving of media content they are broadcasted through the internet to the end users. Basically channel providers host the webpages on which streams can be viewed. YouTube is an example of legitimate channel provider. Media provider who wishes to broadcast its stream has to create a channel on the channel provider's web page. Further he receives a media-server URL to use with his software for transmitting media stream through the channel provider's media server. Media provider also receives so-called stream-embedding code which

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[204] IPO Call for views: Illicit IPTV Streaming Devices, BT submission, 6 april, 2017, pp. 4-6, accessed April 15, 2019, https://www.gov.uk/government/news/pressure-grows-on-producers-of-illegal-streaming-devices-and-thieves-of-paid-for-content.

[205] Marc Edelman, "From Meerkat to Periscope: Does Intellectual Property Law Prohibit the Live Streaming of Commercial Sporting Events?," Columbia University Academic Commons, (2016), p. 474, accessed April 15, 2019, https://doi.org/10.7916/D89Z95CW.

[206] Kanchana Kariyawasam & Matthew Tsai, "Copyright and live streaming of sports broadcasting," International Review of Law, Computers & Technology, 31:3, (2017), pp. 265-288, accessed April 15, 2019, DOI: 10.1080/13600869.2017.1299553.

[207] Luke Hsiao, Hudson Ayers, "The Price of Free Illegal Live Streaming Services," Cornell University, (3 January 2019), p.3, accessed April 15, 2019, https://arxiv.org/abs/1901.00579.

usually contains a customized Flash player and basic configuration to broadcast the live stream.[208]

The next party of the ecosystem is aggregators. Aggregators provide a single web site where end viewers can watch live streams and television channels free of charge. From the technical angle, aggregators receive and structure according to the event catalog of the stream-embedding codes from the different channel providers. When the end user visits aggregator webpages he is easily offered numerous amounts of hyperlinks per one live event. When end user choices event and clicks the hyperlink he hits to the live streaming video page where by the execution of stream-embedding code the Flash player appears and starts live stream broadcast from the channel provider's media server.[209]

To monetize their services media providers, channel providers and aggregators are using different advertiser systems. Usually advertisers are operated by individuals or ad networks and play crucial role in such systems. Aggregators and channel providers adding advertisement to their webpages and live broadcast stream through the using JavaScript code which automatically collect advertisements from the ad network. The last player in this hierarchy is the end user who is watching illegal live streams through the aggregator's web pages.[210]

3.2 Data of illegal live streaming

Sports events organizers for the long time feel the danger that illegal retransmission of live sport events would affect value and profitability of their licensed sports rights.[211] From the very beginning of emerging of live streaming technology it attract pirates among the world to illegal retransmitting of copyrighted content. In 2005 China Republic was called as primary sources for the provision of illegal services of livestreaming through P2P technology. P2P livestreaming technology spread to other countries and increased percentage of people who illegal watch channels such as ESPN, HBO and MTV.[212] Data available in 2007 showed that through P2P live streaming thousands of hours of live sports broadcasts were transmitted including sports events from major sports leagues and organizations, among them Federation Internationale de Football

[208] Tom Van Goethem et al., "It's Free for a Reason: Exploring the Ecosystem of Free Live Streaming Services," Department of Computer Science, Stony Brook University, (2016), p.2, accessed April 15, 2019, DOI: 10.14722/ndss.2016.23030.
[209] Ibid, p. 3.
[210] Luke Hsiao, Hudson Ayers, "The Price of Free Illegal Live Streaming Services," Cornell University, (3 January 2019), p.3, accessed April 15, 2019, https://arxiv.org/abs/1901.00579.
[211] Edelman, "From Meerkat to Periscope: Does Intellectual Property Law Prohibit the Live Streaming of Commercial Sporting Events?," p. 475.
[212] Mellis, "Internet Piracy of Live Sports Telecasts," p. 261.

Association (FIFA), National Basketball Association (NBA), National Hockey League (NHL), Union of European Football Associations (UEFA), English Premier League (ELP) etc.[213]

The reasons for wide spreading of P2P sports events livestreaming outside China's boarders into international scale possibly have become the 2006 FIFA World Cup. It was reported that thousands of viewers downloaded P2P livestreaming services to watch World Cup football matches.[214]

In Digital Piracy of Sporting Events Report conducting in 2008 noticed that live unauthorised streams of sports events is one of the most important threats faced by broadcasters and right owners.[215] By April 2008 177 infringe sites were found which provided unauthorised streams of EPL matches, 85 sites for the Bundesliga (German major football league), 49 sites for La Liga (Spanish major football league), 53 sites for Serie A. Vast of majority of such streams were based on P2P- based method. With regard to the Basketball, 172 sites providing unauthorised streams of NBA with over 60% through Sopcast P2P service.[216] Most of these sites were based in China.

In Update on Digital Piracy of Sporting Events report released in 2011 had provided new representation of online sports piracy.[217] The significant changes since 2008 were in the methods for providing illegal livestreaming of sports events. UGC (user generate content) Live streaming caught up in popularity P2P or traditional Unicast methods and users shift from paid to free forms of streaming. [218] The statistic presented that 15, 235 UGC Live Streams were found on 17 sites during the 2010 FIFA World Cup in South Africa. The emergence of new UGC Live Streams sites increased in 37 times in comparison with 2007.[219] For Bundesliga report showed increasing of sites and servers which provided unauthorized live streams to 254 with comparison with previous the previous report. For the UEFA Champions League UGC Live streaming was used in 3,710 infringements on 22 sites. P2P live streaming for the Champions League composed 388 individual infringements on 147 sites.[220] The increasing was demonstrated for all types of sport including tennis, cricket, golf, formula one etc.

In 2013 Consultation Response the Sports Rights Owners Coalition (SROC) emphasized that "digital piracy is actually the main obstacle to innovation and development of business models

[213] Ibid., p.262.
[214] Ibid.
[215] Background Report on Digital Piracy of Sporting Events, NetResult, London (2008), p.3, accessed April 15, 2019, https://studylib.net/doc/8553978/report-on-digital-piracy-of-sporting-events.
[216] Ibid., pp. 5-6.
[217] Update on Digital Piracy of Sporting Events 2011, Submitted in Call for Evidence to Independent Review of Intellectual Property and Growth.
[218] Ibid., p.4.
[219] Ibid., p. 16.
[220] Ibid., p.46

online".[221] It was mentioned that during 2012/2013 season of EPL 33.000 illegal live streams were detected on around 250 sites.[222] SROC also noted that estimated incomes of one site which provide illegal streaming of EPL matches constituted around £12m a year generated by advertising.[223]

The most recent available data from the 2018 FIFA World Cup in Russia and the 2017/2018 EPL season show tremendous increasing in frequency, types and methods for live streaming piracy. Today using of IPTV illicit fully-loaded devices became a global problem for right holders among every sports industry. BT (UK television channel, the owner of broadcasting rights for EPL and UEFA Champion League) in its submission for "Illicit IPTV streaming devices" argued that "viewing figures show that legitimate audiences for live football are falling with a decline in EPL viewing of around 12% on average".[224] BT believed that viewing of illicit streams is one of main drivers in this decline in viewing.[225] The data provided by BT showed nearly 14000 listing for IPTV devices, 19% of infringers using IPTV piracy, nearly two thirds (62%) reported to using IPTV devices to watch live sports at least once.[226]

In EPL submission for European Commission's "Impact Assessment on measures to improve the effectiveness of the fight against illegal content online" carried in 2018 was said that the most common methods for infringement of its copyright were streamers which used a streaming platform including social media platforms such as Facebook and YouTube for creation a link to play content on site or shared on the internet including link aggregator sites, streams onto the server without the need for a streaming platforms and illicit livestreaming devices that deliver online streams of EPL through the connection to a television.[227] EPL provide a statistic that pirates have been responsible for over 175,000 illegal live streams of football matches and almost 400,000 unauthorized recorded clips of matches between 11 August 2017 and 17 March 2018.[228]

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[221] Green Paper: "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Value", Consultation Response by the Sports Rights Owners Coalition (SROC), (2013), p. 11, accessed April 15, 2019, https://ec.europa.eu/digital-single-market/en/news/consultation-green-paper-preparing-fully-converged-audiovisual-world-growth-creation-and-values.
[222] Ibid.
[223] Ibid.
[224] IPO Call for views: Illicit IPTV Streaming Devices, BT submission, 6 april, 2017, p. 8, accessed April 15, 2019, https://www.gov.uk/government/news/pressure-grows-on-producers-of-illegal-streaming-devices-and-thieves-of-paid-for-content.
[225] Ibid.
[226] Ibid., p.7.
[227] European Commission's Impact Assessment on measures to improve the effectiveness of the fight against illegal content online: Premier League Submission, (2018), p.1, accessed April 20, 2019, https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-1183598/feedback_en?p_id=179092.
[228] Ibid., p.2.

The report "Fighting Illegal Streaming Analysis of the World Football Tournament 2018" carried by Viacess-Orca emphasized that "more than one million of illicit set-top-boxes (illicit IPTV devices), which allow customers to stream pirated content, had been sold in the past two years in UK".[229] Viacess-Orca has conducted three parts study of illegal streaming of football matches during Fifa World Cup 2018 in Russia. The result have showed that Periscope, Facebook and YouTube entered the top 5 link hosted domains.[230] Total number of illegal streams for the game Croatia v England counted 4442 with 391 links on Facebook, 75 on YouTube and 305 on Periscope. For the final game Croatia v France amount of links calculated 415 on Facebook and 265 on Periscope. Viacess-Orca provided detail monitoring of the illegal streaming links for Brazil v Belgium and calculated overall amount viewers of this illegal stream through the all platforms. The total viewers on Facebook represented around 887,956 users, 80,300 viewers on YouTube and more than one million for Periscope.[231] Moreover, Viacess-Orca showed a new player in illegal livestreaming – Twitch. Twitch is an official streaming and VOD (video on-demand) service for video games, electronic sports and related programs. Viacess-Orca noted that video game platforms are not under prime control in the current battle against online illegal live streaming however it play a major role there.[232]

From the latest data it is clear that services like Periscope became one of the driven forces for illegal live streaming of sports events. This is not surprise because they provide one of the easiest ways for streamer from the one side to share his live stream and for the viewer from the second side to consume it. Since launching of Periscope it attracted large attention form the right holders and sports events organizers. Periscope launched on March 26, 2015 and month later on May 2, 2015 it let to the "commercial sports industry's hyper-vigilance" because of involving in the huge amount of illegal live streaming of the "Fight of the Century" between Floyd Mayweather, Jr. and Manny Pacquiao.[233] HBO and Showtime (television networks) jointly broadcast the fight against fee of approximately $100 on pay per-view basis. When some of the fans purchase access to the fight, thousands of others watched free version through Periscope.[234] Irdeto Satellite

[229] Fighting Illegal Streaming Analysis of the World Football Tournament, Interactive Orca, (2018): p. 6, accessed April 20, 2019, https://www.viaccess-orca.com/hubfs/WC%20Reports%202018/Fighting-Illegal-Streaming-A-Viaccess-Orca-Report.pdf.
[230] Ibid., p.23.
[231] Ibid., pp. 28-29.
[232] Ibid., p.32.
[233] Edelman, "From Meerkat to Periscope: Does Intellectual Property Law Prohibit the Live Streaming of Commercial Sporting Events?," p. 477.
[234] Ibid.

Company identified 239 illegal streaming on Periscope, one of them amounted 472,000 viewers.[235]

Other examples of using Periscope for streaming football match which was reported in media took place in UK. The game between Hibs and Hearts in the Scottish Cup was not showed on TV "due to strict UEFA rules which prevent domestic games being aired at the same time as Champions League fixture". The match was showed by the spectators through Periscope from the stadium. Streams attracted more than 100,000 viewers overall.[236] In turn FA Cup match Manchester City v Crystal Palace attracted 139,300 viewers in Periscope. The fan started stream for his father who could not visit the game and released that thousands of users around the globe followed his translation.[237]

Following this data it is possible to make presumption that there is a concern by the sports events organizers and right holders regarding two types of illegal live streaming of sports events: streaming by spectators from the dedicated venues and retransmission of broadcasting signal through the various methods available on the market. But do they have enough copyright legal instruments to combat such situation?

3.3 Time for the new right

ECJ in its ruling Premier League v QC Leisure noted that sporting events could not be classified as work because of the lack of author's own intellectual creation. As was mentioned football matches which strictly follow the rules of the game left no space for creative freedom for the purpose of copyright and emphasized that EU law does not protect sports events as such at all in the field of intellectual property.[238] In the same time the Court confirmed that "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 by national legal orders".[239] The need for the protection of sports

[235] Tatyana Kokorina, "All about fighting piracy. How not to lose millions on illegal broadcasts," Sport Connect, 28 November, 2017, accessed April 20, 2019, http://sport-connect.ru/case/piratstvo.
[236] Ryan Mcdonald, "More than 100,000 fans beat Uefa's telly ban to watch Hibs' Scottish Cup win over Hearts live on Periscope," The Scottish Sun, 22 February, 2017, accessed April 20, 2019, https://www.thescottishsun.co.uk/sport/football/628029/more-than-100000-fans-beat-uefas-telly-ban-to-watch-hibs-scottish-cup-win-over-hearts-live-on-periscope/.
[237] James Andrew, "Premier League vow to take action against fans broadcasting games on Periscope after one FA Cup transmission attracts 139,000 viewers," Mail Online 3 February 2017, accessed April 20, 2019, https://www.dailymail.co.uk/sport/football/article-4188294/Premier-League-action-against-fans-using-Periscope.html.
[238] Football Association Premier League v QC Leisure.
[239] Ibid.

events have significantly increased over the last few years. Introduction mobile applications for the live streaming opened opportunity for the spectators to stream sports events from the dedicated venues. Quality of the cameras in a modern smartphones and support by the streaming applications additional equipment (such as GoPro cameras and drones) with high-speed mobile internet capabilities through 4G and in nearest future 5G connection provide a decent quality for the content sharing.[240] The emergence of new technologies such as virtual reality broadcast of sports events which could simulate stadium attendance would also potentially face the problem of lack of copyright protection over such virtual type of broadcast.[241] On the author's opinion, the existence in some national orders so called "house right" do not seem as adequate response to the potential threat. Such right based on the property rights or contractual rights does not impose any obligations or remedies with the third party effect. It also cannot sufficiently prevent illegal streaming of sports events from outside the premises (high building near the stadium, drones etc.) [242] In case of amateur sport it is possible that the real owner of premises has no objections that the streams being taken by spectators.[243] Such situation could lead real threat for the minority sports which try to reach niche audiences.[244] Even if they can sell their broadcast rights in order to attract more viewers or fans to the sport and to profit from the realization of rights for the further development of the sport theirs attempts could be blurred by the spectators who stream game from the venue.

In case of EPL the league reported that they concluded an agreement with social media platforms (YouTube, Twitter, Facebook) to take down any illegal livestreaming and employed companies to monitor the internet looking for the illegal transmissions. Clubs also trained stewards in stadiums to looking for anyone who broadcast games through the smartphone.[245] However, it seems that such methods are not applicable for the all sports and leagues in a way of the high cost of its implementation.

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[240] Nelson Granados, "5G: The Next Tech Disruption In Media And Entertainment Is Coming," Forbes, July 17, 2017, accessed April 20, 2019, https://www.forbes.com/sites/nelsongranados/2017/07/17/5g-the-next-tech-disruption-in-media-and-entertainment-is-coming/#353e2a270260

[241] Marie Hopkins, "Live Sports Virtual Reality Broadcasts: Copyright and Other Protections," 16 Duke Law & Technology Review (2018),), p.150-151, 160, accessed April 20, 2019, https://scholarship.law.duke.edu/dltr/vol16/iss1/5

[242] Gurovits, The Sport law review 2017, p.115

[243] Dreier, "Creating New Property Rights on the Basis of General Legal Concepts - Without Limits?", p.154.

[244] Raymond Boyle, "Battle for control? Copyright, football and European media rights" Media, Culture & Society April 2015 37 (2015), p.11, accessed April 20, 2019, https://www.create.ac.uk/publications/copyright-football-and-european-media-rights.

[245] James Andrew, "Premier League vow to take action against fans broadcasting games on Periscope after one FA Cup transmission attracts 139,000 viewers," Mail Online 3 February 2017, accessed April 20, 2019, https://www.dailymail.co.uk/sport/football/article-4188294/Premier-League-action-against-fans-using-Periscope.html.

Periscope rules and conditions forbidden violation of other people's intellectual property rights.[246] According to Periscope copyright policy "Twitter (Periscope is a part of Twitter's services) responds to copyright complaints submitted under the Digital Millennium Copyright Act ("DMCA"). Section 512 of the DMCA outlines the statutory requirements necessary for formally reporting copyright infringement […] Twitter will respond to reports of […]allegations concerning the unauthorized use of a copyrighted video or image uploaded through our media hosting services".[247]

Facebook terms of use stated that "you may not use our Products to share content or perform actions that: […] violate the rights of others, including copyright".[248] The same rules are applicable in YouTube terms and conditions.[249]

With the absence of copyright subject matter in the sports events as such, sports events organizers cannot claim protection on the base of intellectual property over the videos which were recorded inside dedicated venues. In order to respond for such scenarios and protect rights of sports events organizers which make huge investments for conducting of events some of the Member States introduced specific rights for sports events organizers[250]. In turn others Member States tried evaluating sports events as an artistic work or granting copyright protection for the sports moves.[251]

UK authors tried to consider sporting events as dramatic works. In case of adversarial sports (such as football, basketball, hockey with head to head competition involved) it was mentioned that the decisions in game mainly originate from the players themselves and coach' s instructions just present an idea or a system. Players are mostly response for the opposing team decisions. Coach's instructions from the diagrammed play cannot be completely duplicated on the field. Such state of affairs arise doubts whether sport event would totally represent coach's ideas that contained in his playbook. In order to constitute dramatic work each part of the event that does not follow the script should not be considered. UK case law stated that dramatic work should be stable when presented in performance. Unpredictability of adversarial sport cannot grant

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[246] "Community rules," Periscope Community Rules, accessed April 20, 2019, https://www.periscope.tv/content

[247] "Copyright policy," Twitter Help Center, accessed April 20, 2019, https://help.twitter.com/en/rules-and-policies/copyright-policy

[248] "Facebook terms of use," Facebook, accessed April 20, 2019, https://www.facebook.com/legal/terms

[249] "Terms and Conditions", YouTube, accessed April 20, 2019, https://www.youtube.com/static?template=terms

[250] Airina Lynn Rodrigues, David R. Pahl, "In-venue streaming and broadcasting of live sporting events – key legal issues for sports clubs and leagues," DLA Piper, 25 March 2019, accessed April 20, 2019, https://www.dlapiper.com/en/us/insights/publications/2019/03/in-venue-streaming-and-broadcasting-of-live-sporting-events/

[251] Viola Elam, "Sporting events as dramatic works in the UK copyright system," Entertainment and Sports Law Journal 2015 Vol.13, (2015), accessed April 20, 2019, DOI: 10.16997/eslj.1.

required level of certainty which would be enough for qualification of a 'work'.[252] A test for the determination of unpredictable subject matter as a dramatic work required that such matter can be written down and published, however elements which can be printed in adversarial sports in detail manner are lacking. One more possible problem is the number of copyright owners which among others can be include the league, athletes and even fans which will led to difficult commercial exploitations of such events.[253]

In turn aesthetic sports (such as figure skating, synchronized swimming, step aerobics, so called "choreographed" sports) could be considered as a dramatic work worth for copyright protection. By their nature such type of sports are scripted, do not based on improvisation and have enough degree of certainty which give it possibility to be fixed in coach's playbook using diagrams, figures, symbols etc. Before the performance each move in aesthetic sports is repeated and remembered during the preparation stage.[254] It was emphasized that choreography from the aesthetic sport could easily be played in theatre spectacle which makes such factor of crucial nature in distinguishing between different categories of sports events for the purpose of copyright protection.[255] From the reading of ECJ ruling on "originality" standard it was noted that notwithstanding on the rule of game creative choices in "choreographed" sports can be shown in the "combinations and arrangements of the single routines". The amount of athletic moves which can satisfy 'free' routine is broad enough to make aesthetic sports original.[256] What to the question of duration for protection granted by copyright law for choreographed sports it could be limited to the season which encourages coaches with necessity to develop new creative plays and protect the competitiveness of the game.[257]

However, from the evaluation of positions to grant copyright protection for sports events as a dramatic and artistic work it remains unclear to whom such protection should be granted. Even in aesthetic sport play aspect of the game express not only pure idea of the coach, play express ideas within the context of the game. The coach's playbook may serve as main plan for the game, but sportsmen do not necessary duplicate each step and in fact may bring something that did not fixed in the coach's notations.[258]

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[252] Ibid., para.38.
[253] Ibid., para.39.
[254] Proloy K. Das, "Offensive Protection: The Potential Application of Intellectual Property Law to Scripted Sports Plays," Indiana Law Journal, Volume 75, Issue 3 (2000), p. 1088, accessed April 20, 2019, https://www.repository.law.indiana.edu/ilj/vol75/iss3/7.
[255] Elam, "Sporting events as dramatic works in the UK copyright system," para 51.
[256] Ibid, para. 59.
[257] Das, "Offensive Protection: The Potential Application of Intellectual Property Law to Scripted Sports Plays," p. 1098.
[258] Ibid., p,1092-1093.

Other authors also tried to challenge lack of free and creative choices in the execution of specific sports moves and tricks. It was stated that such argument is potentially weak taking into consideration that sports moves are influenced by creativity of the players in the same manner as they are influenced by the rules of the game. For instance, when football player execute the penalty or particular method of kicking the ball in the heat of a game he fully relies on his creativity while following the rules of the game.[259] There was proposal to evaluate sports moves based on their functionality. Put the line between the whole functional aspects of sports moves and aesthetical aspects of moves could determine certain rules for copyright protection of such moves or tricks. The reason behind separation is that aesthetical aspects are more copyrightable but it is difficult to make such division in practice. The economical point for copyright protection of sports moves is lying in incentive for innovators for creations new sports moves.[260] The scope of protection should base on the substantial innovation and effect which such move has in specific sport.[261]

Copyright originality standard introduced by ECJ was heavily criticized by Dutch scholars. It was emphasized that 'author's own intellectual creation' test is difficult to apply when the connection between work and the authors of the work is weak. It is a case of a joint works in particularly art, software, and encyclopedias.[262] During the observation of ECJ ruling in Premier League v QC Leisure the grounds of copyright exception for sports events was disputed. It was stated that the main objective of sports is fair competition among participants. Athletes may increase their competitive advantages through the execution of the physical trainings, better applying knowledges, using of new techniques or choosing better equipment. It would not be fair if one sportsman will have competitive advantages due to the intellectual property right over the execution of sports move (with only possible exceptions in choreographed sports). However by applying ECJ 'creative freedom' test it possible that sports events are eligible subject-matter and

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[259] Thomas Margoni, "Who owns the World Cup? The case for and against (intellectual) property rights in sports," Kluwer Copyright Blog, October 13, 2014, accessed April 15, 2019, http://copyrightblog.kluweriplaw.com/2014/10/13/who-owns-the-world-cup-the-case-for-and-against-intellectual-property-rights-in-sports/.

[260] Ankur Gupta, "Copyright eligibility of sports "moves": A far stretch?," (2016), pp. 6,8, accessed April 15, 2019, https://www.academia.edu/35719183/Copyright_Eligibility_of_Sports_Moves_A_Far_Stretch_Ankur_Gupta

[261] Garcia, G.R., "He Shoots, He Scores…and Received Copyright Protection?," Den. U. Sports & Ent. L.J. (Fall 2011), p.109, accessed April 15, 2019, https://www.law.du.edu/documents/sports-and-entertainment-law-journal/issues/11/Garcia-FINAL-Online-Version.pdf.

[262] Stef Van Gompel, "Creativity, autonomy and personal touch: A critical appraisal of the CJEU's originality test for copyright. In The Work of Authorship," Mireille van Eeschoud, Ed. Amsterdam University Press, Amsterdam, (2014), p. 97, accessed April 20, 2019, www.ivir.nl/publicaties/download/1468.

in such case it also not clear who is the 'author' of the matches: coach, player, team or someone else.[263]

From the other hand, a few Member States introduced in their national legal orders specific rights for protection of sports events organizers.[264] Such rights were implemented in special laws and codes designed for sport sector instead of intellectual property laws. The most developed sports law is available in France. For the first time France granted special rights to sports organizers in its sport act in 1984 which is now codified in French Sports Code.[265] According to the Article L333-1 "sports federations and organizers of sports events are owners of the exploitation right of the sports events or competitions that they organize".[266] It is not enough clear from the provision what types of rights are include in 'exploitation' notion. The French administrative court in its interpretation of above mentioned article defined that sports event organizers and federations poses property right over sports events, but understanding of nature of this right is unclear nowadays. Some of the authors support the court position instead others define such right as right related to copyright.[267]

Such unique type of right (sui generis right) is granting sports events organizers with the purpose among others to protect broadcasts of their events which include as ownership over broadcast as exploitation rights over it. The primary goal of such sui generis right is to protect federations and organizers who invest in holding of the sports events.[268] The interpretations of this right by the French courts are quite broad and even include photography taken at the event, right to publish a book about the event and right to consent to bets.[269]

Similarly to French right Bulgaria in theirs new Law "On Physical Education and Sport" in article 17(9) provided ownership over television and broadcasting rights of sports events but by sports clubs.[270] Sport clubs have to operate these rights following the rules of the federations in which they are registered. Hungary grants broadcasting and recording rights of sports events

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[263] Ibid., p.106.
[264] Audiovisual rights in sports events An EU perspective, (Briefing March 2017): p.2, accessed April 15, 2019, http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599320/EPRS_BRI(2017)599320_EN.pdf.
[265] Van Rompuy, Study on sports organisers' rights in the European Union, p.38.
[266] Code du Sport, created by Ordonnance n° 2006-596 du 23 mai 2006 relative à la partie législative du code du sport, (2006), Art. l333-1, accessed April 15, 2019, https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000792831&dateTexte=.
[267] Van Rompuy, Study on sports organisers' rights in the European Union, p.38.
[268] Airina Lynn Rodrigues, David R. Pahl, "In-venue streaming and broadcasting of live sporting events – key legal issues for sports clubs and leagues," DLA Piper, 25 March 2019, accessed April 20, 2019, https://www.dlapiper.com/en/us/insights/publications/2019/03/in-venue-streaming-and-broadcasting-of-live-sporting-events/.
[269]Van Rompuy, Study on sports organisers' rights in the European Union, p.38.
[270] Law on physical education and sport, Prom. State Gazette, no. 86, dated 18.10.2018, 2018, accessed April 20, 2019, http://mpes.government.bg/Documents/Documents/Zakoni/2019/ZAKON_NEW.pdf

through all electronic and digital means (include television, radio and internet) to sports federations and associations.[271] Such rights are assigned to the federation by the clubs and athletes for defined period. The same rights exist in Romanian sport law.[272]

The most far reaching was Italians. They created totally new neighbouring right which was incorporated in existent Italian Copyright Act, namely "audiovisual sport right" in article 78-quarter.[273] Italian sport decree defines audiovisual rights as exclusive rights which cover the fixation and reproduction rights in any form of the event, also right of communication to the public and right for the fixation and reproduction of the broadcast. Duration of audiovisual right is established for 50 years since the event take place. Article 3 of Sport Decree stated that ownership of sports audiovisual rights belongs jointly to the organizer of competition and sport event organizer but realization of such rights belong only to the organizer of the competition. Rights that arise from audiovisual production are assigned to the sport event organizer. Last provision established dominance over EU neighborhood right of the producer of the first fixation of a film and if spot event organizer is other person than producer of the first fixation of a film it results in contradiction to EU copyright law.[274]

In other EU Member States sport event organizers right is mostly regulated by sports leagues and federations and as basis they only are binding for the members of such leagues. For instance, in Spain the exploitation rights for audiovisual and broadcasting rights in football belong jointly to the two teams participating in particular game.[275]

The author of this thesis thinks, taking into the consideration that it still does not exist general and well-reasoned position over copyright protection for sports events as such, with strong arguments against such protection which are based on competitive nature of the sport, undefined concept of the authorship in sports events and the separation of sport as such into categories (adversarial and aesthetic sport) which define worthiness and not worthiness of copyright protection, it is unlikely that such protection will emerge in the nearest future. What is more reasoned it a position to grant for sports events organizers protection over its events under neibouring rights. Such right will protect their investments in the organization of sports events, which are risky by their nature and will grant right to prohibit illegal live streaming from the dedicated venues which extends to third party effect based on intellectual property rights.

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[271] Act I on Sports, (2004), Art. 36, accessed April 20, 2019, http://www.aikido-szakszovetseg.hu/doc/lawonsport.pdf.
[272] Van Rompuy, Study on sports organisers' rights in the European Union, p.40.
[273] Protezione del diritto d'autore e di altri diritti connessi al suo esercizio, LEGGE 22 aprile 1941, n. 633, accessed April 20, 2019, http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1941-04-22;633!vig=.
[274] Margoni, The protection of sports events in the EU: Property, intellectual property, unfair competition and special forms of protection, p. 24.
[275] Van Rompuy, Study on sports organisers' rights in the European Union, p.41.

Provision, purpose of which was to introduce new neighbouring right for sports events organizers also appeared in the amendments adopted by the European Parliament to the proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market.[276] The European Parliament has adopted proposal on Copyright Directive in the Digital Single Market with new Article 12(a) added by them. The Article with the title "Protection of sport event organizers" stated that "Member States shall provide sport event organizers with the rights provided for in Article 2 and Article 3 (2) of Directive 2001/29/EC and Article 7 of Directive 2006/115/EC".[277] On the author's opinion, from the wording of such provision, it seems that intention of European Parliament was to introduce reproduction, making available to the public and fixation right to the sports organizers over their events in the form of related rights. In its report to the amendments for the proposal on Copyright Directive in the Digital Single Market European Parliament explained justification for such provision.[278] European Parliament cited Article 165(1) TFEU which emphasized that "Union is to contribute to the promotion of European sporting issues", referred to the recital 52 of Audiovisual Media Services Directive, that envisaged legal grounds to sell rights related to the events by event organizer and mentioned that European Parliament supported protection of intellectual property rights of sports events organizers in several reports on sport. European Parliament also cited ECJ decision Premier League v QC Leisure and concluded that five Member States have already granted a neighbouring right to sports events organizers.[279]

During trilogue negotiations between the European Commission, the Council of the European Union and the European Parliament which started after the updated version of Copyright Directive in the Digital Single Market was adopted by European Parliament, article 12(a) was removed from the directive.[280] In final text, after trilogue negotiations, adopted by European Parliament, in the annex to the legislation resolution a note was made that the Commission knows about crucial role of sports events organizers in financing of sport within EU

[276] Amendments adopted by the European Parliament on 12 September 2018 on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market, (COM(2016)0593 – C8-0383/2016 – 2016/0280(COD), Wednesday, 12 September 2018 – Strasbourg, (2018), accessed April 15, 2019, http://www.europarl.europa.eu/doceo/document/TA-8-2018-0337_EN.html.
[277] Ibid., Art. 12(a).
[278] REPORT on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market (COM(2016)0593 – C8-0383/2016 – 2016/0280(COD)) 29.6.2018, (2018), accessed April 15, 2019, http://www.europarl.europa.eu/doceo/document/A-8-2018-0245_EN.html?redirect.
[279] Ibid.
[280] Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market COM (2016) 593 final - 2016/0280 (COD), Version 2, 23/10/2018, (2018), accessed April 15, 2019, https://juliareda.eu/wp-content/uploads/2018/10/Copyright-Directive_4-column-document_ARTICLES-v2-23102018.pdf

and that it will consider problem of illegal online transmissions of sport broadcast in digital environment from economic and social point of view in future.[281]

3.4 Enforcement challenges

Operational system of illegal live streaming involves a large amount of participants. Two end points of the chain consist of uploaders of the stream, from the one side and end-user or viewer of the stream from the opposite side. Between them there are several parties services of which are used to make illegal stream available to the viewer. These parties includes for example operators of streaming platform, streaming server hosts, dedicated server providers, linking site operators, apps and add-on operators, sellers of illicit streaming devices etc.[282]

Where the illegal uploading of copyright content to the internet constitute copyright infringement on the base of reproduction or communication to the public,[283] the legality of the actions of other parties involved in operational system is not so clear.

Acts of end users mostly refer as passive streaming mean that they receive temporary copies of work which is saving in the random access memory for the short period of time. The exception provided in InfoSoc Directive stated that "Temporary acts of reproduction […] which are transient and essential part of a technological process […] shall be exempted from the reproduction right". [284] There are a few case law of ECJ that lead to interpretation of this article.

In Public Relations Consultants Association v Newspaper Licensing Agency the question was "whether internet users who view websites on their computers without downloading or printing them out are committing infringements of copyright by reason of the creation of on-screen copies and cached copies"[285] ECJ in its interpretation divided Article 5(1) of InfoSoc Directive into five conditions. Regarding "temporary copy" the Court mentioned that on-screen copies automatically deleted when user moved from the website and the cached copies

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[281] European Parliament legislative resolution of 26 March 2019 on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market (COM(2016)0593 – C8-0383/2016 – 2016/0280(COD)) (Ordinary legislative procedure: first reading), (2019), accessed April 20, 2019, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2019-0231+0+DOC+XML+V0//EN#BKMD-16.

[282] European Commission's Impact Assessment on measures to improve the effectiveness of the fight against illegal content online: Premier League Submission, (2018), p.4, accessed April 20, 2019, https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-1183598/feedback_en?p_id=179092.

[283] João Pedro Quintais, "Global Online Piracy Study Legal Background Report," Faculty of Law, University of Amsterdam, Institute for Information Law (2018), p. 41, accessed April 20, 2019, https://www.ivir.nl/publicaties/download/Global-Online-Piracy-Study-Legal-Background-Report.pdf.

[284] InfoSoc Directive, Art. 5(1).

[285] Case C-360/13, Public Relations Consultants Association Ltd v Newspaper Licensing Agency Ltd and Others, (2014), para. 94.

automatically replaced within short period of time depends on amount of cache memory, and it followed to conclusion that such copies were temporary.[286] Regarding "integral and essential part of a technological process" the Justice said that on-screen and cache copies are made entirely in the context of the implementation of a technological process[287] and constitute essential part of this process. [288] Exceptions provided in Article 5(1) are only possible in conjunction with conditions in Article 5(5). The main condition of the article says that "Act of reproduction is exempt from the reproduction right if […] do not unreasonably prejudice the legitimate interests of the rights holders".[289] ECJ mentioned that "the copies make it possible, in principle, for internet users to access works displayed on websites without the authorization of the copyright holders, the copies do not unreasonably prejudice the legitimate interests of those rights holders"[290] and such authorization should be obtained by internet publisher, not the user.[291] The Court came to the conclusion that on-screen copies and cache copies made by the end-user in the course of viewing website do not require authorization of the copyright holders.[292] Taking into account that passive streaming also involves process of making temporary copies of screen and cache (also possible RAM or virtual memory copies), which are essential part of this process, may lead to the conclusions that passive streaming also does not require authorization of the right holders. But in the light of Article 5(5) it seems that it is possible only if end-user knows or ought to have known that web-site operator obtained license from the right holder.

In other ECJ decision Filmspeler[293] the Court was asked whether streaming from illicit streaming devices (with installed ad-ons) by end-user constitute exception under "lawful use" clause of InfoSoc Directive.[294] The Court held that "lawful use" means such use which was authorized by right holder or not restricted by applicable legislation.[295] ECJ noticed that use of the works was not authorized by right holders and that end-users had knowledge that player gave possibilities to access free and unauthorized works.[296]Further Justice emphasized that, such temporary acts of reproduction caused unreasonable prejudice to the legitimate interests of the right holder because they "usually result in a diminution of lawful transactions relating to the

[286] Ibid., para. 26.
[287] Ibid., para. 28.
[288] Ibid., para. 37.
[289] InfoSoc Directive, Article 5(5).
[290] Case C-360/13, Public Relations Consultants Association Ltd v Newspaper Licensing Agency Ltd and Others, (2014), Para. 56.
[291] Ibid., Para. 57.
[292] Ibid., Para. 63.
[293] Case C-527/15, Stichting Brein v Jack Frederik Wullems, (2017).
[294] Ibid., para. 21-22.
[295] Ibid., para. 65.
[296] Ibid., para. 69.

protected works".[297] The Court concluded that acts of streaming by end-user from illicit devices with preinstalled ad-ons do not fall under exceptions in Article 5 (1) and (5).[298]

Such finding of the Court gives reasons to affirm that EU law qualifies passive streaming as a reproduction act within the meaning of copyright directive. The interpretation of "lawful use" exception of Article 5(5) requires that source of streaming have to be authorized by right holder.[299]

The Court in Filmspeler also concluded that the sale of illicit live streaming devices constituted 'communication to the public' within the meaning of Article 3(1) of Copyright directive. ECJ in its findings referred to the GS Media case[300] and reminded that such concept "requires an individual assessment" [301] and consist of two criteria: "'act of communication' of a work and the communication of that work to a 'public'".[302] The Court held that under recital 27 of InfoSoc Directive mere provision of facilities that giving possibilities to making a communication did not in itself amount to 'communication'.[303] However, in this case the seller went further than 'mere' provision of facilities because he knew what opportunities his preinstalled add-ons open, namely gave access to protected works without consent of the copyright holders of such works. Without such installed by the seller add-ons the end-users could not benefit from protected works.[304]The Court noted that illicit streaming device was sold to a large number of people and with "full knowledge that add-ons containing hyperlinks gave access to the work published illegally".[305] The last observation by ECJ was that illicit device was sold with intention to make a profit and users paid in order to have direct access to unauthorized work.[306]

Linking site operators (aggregators) also were confirmed liable for the communication to the public within the meaning of Article 3(1) of InfoSoc Directive. In Ziggo case[307] ECJ was asked where operator of the site on which no protected works are available provides service of indexing and categorizing allows users to locate and share protected works.[308] The Court noticed that operator of the site did not by itself place works on the site but in the same time it managed

[297] Ibid., para. 70.
[298] Ibid., para 72.
[299] Quintais, "Global Online Piracy Study Legal Background Report," p.40
[300] C-160/15, GS Media BV v Sanoma Media Netherlands BV, (2016).
[301] Case C-527/15, Stichting Brein v Jack Frederik Wullems, para. 28.
[302] Ibid., para. 29.
[303] Ibid., para.39.
[304] Ibid., para. 41.
[305] Ibid., para. 50.
[306] Ibid., para. 51 .
[307] Case C-610/15, Stichting Brein v Ziggo BV, XS4ALL Internet BV, (2017).
[308] Ibid., para. 17-18.

platform and index torrent files which allow users to search and share protected works.[309] Moreover, through the search engine available on platform the works could be classified by different categories such as genre, popularity etc. Operator managed placing of works in different categories and remove not working links.[310] To establish 'public' concept the Court confirmed that operator of platform had millions of "peers" which could access works in any time and from any place. The works were communicated to the 'new' public because site operator on blogs and forums stated that its purpose is to make protected works available and encourage sharing of works. The purpose of site operators also was to get profit through advertising available on the platform.[311] The Court concluded that concept of "communication to the public" covers linking platforms which provided search engine, categorization and indexing of the links.

Mostly the parties involved in operational system of live streaming between the endpoints are considered as intermediary service providers.[312] InfoSoc directive established the right for injunctions "against intermediaries whose services are used by a third party to infringe a copyright or related right",[313] however EU legislation is not fully harmonized on this matter.[314] Granting the right for injunctions against intermediaries was justified by the fact that such services is using by infringers for theirs activities and help to carry protected subject matter in a network.[315]

Partial harmonization of intermediaries' liabilities was provided by E-Commerce Directive.[316] The directive also introduced 'safe harbors' for liability exemption for the service providers which provide 'mere conduit', 'caching' and 'hosting'.[317] 'Safe harbors' only applies when activities of service providers constitute "mere technical, automatic and passive nature".[318] The problem arises in determining where the activities are of passive or active nature. ECJ in case Google France v Louis Vuitton noticed that the actions of "knowledge of, or control over, the data stored" should be considered as active and fall outside of 'safe harbor'.[319] In other case

[309] Ibid., para. 36.
[310] Ibid., para. 38.
[311] Ibid., para. 42, 45, 46.
[312] European Commission's Impact Assessment on measures to improve the effectiveness of the fight against illegal content online: Premier League Submission, (2018), p.2, accessed April 20, 2019, https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-1183598/feedback_en?p_id=179092
[313] InfoSoc Directive, Art. 8(3).
[314] Quintais," Global Online Piracy Study Legal Background Report," p.34.
[315] InfoSoc Directive, Recital 59.
[316] 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, (2000).
[317] Ibid., Art.12-14.
[318] Ibid., Recital 42.
[319] Joined Cases C-236/08 to C-238/08, Google France SARL, Google Inc. v Louis Vuitton Malletier SA, (2010): para. 120.

L'Oréal v eBay the role played by eBay in "optimizing the presentation of the offers for sale in question or promoting those offers" was confirmed active in the meaning of Article 14(1).[320]

The crucial role of E-Commerce Directive for the right holders of intellectual property rights is that the Directive present foundation for illegal content removal in the EU.[321] Among the goals of the directive there is a goal to develop "rapid and reliable procedures for removing and disabling access to illegal information".[322] For the sports events organizers rapid removing of illegal live streams is perhaps the most important priority because the value of theirs content spread in whole during the live viewing which means that removing is almost limited to the duration of the sports events.[323] The data shows that live streaming services host their infrastructure all over the world. Among the most popular locations for hosting sites for linking services are Moldova, Switzerland, Belize and Panama. For the channel providers demanded host locations also included Canada, Ukraine, Czech Republic and the United States. An explanation for such different destinations is laying in jurisdiction advantages and preferable copyright law regimes. [324] Bringing a claim and enforcing a judgment against uploaders, linking site operators, sellers of illicit live streaming devices or channel providers could be difficult because of lack of jurisdiction.[325] In such case enforcement measures can be focused on the intermediates which facilitate provision of infringing content and falls under the laws of local jurisdiction. The main aim of enforcement measures focused on the intermediaries is to stop infringements made by the users of their services.[326]

According to the E-Commerce Directive it applies to rather broad amount of service providers among them "selling goods on-line", "on-line information or commercial communications", "tools allowing for search, access and retrieval of data", "transmission of

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[320] Case C-324/09, L'Oréal SA v eBay International AG, (2011): para. 116.
[321] Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions Tackling Illegal Content Online Towards An Enhanced Responsibility Of Online Platforms, Brussels, 28.9.2017 COM(2017) 555 final, (2017): p.4, accessed April 15, 2019, https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-555-F1-EN-MAIN-PART-1.PDF.
[322] E-commerce Directive, Recital 40.
[323] Audiovisual rights in sports events An EU perspective, (Briefing March 2017): p.9, accessed April 15, 2019, http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599320/EPRS_BRI(2017)599320_EN.pdf.
[324] Tom Van Goethem et al., "It's Free for a Reason: Exploring the Ecosystem of Free Live Streaming Services," Department of Computer Science, Stony Brook University, (2016), p.6, accessed April 15, 2019, DOI:10.14722/ndss.2016.23030.
[325] Stephanie N. Horner, "DMCA: Professional Sports Leagues' Answer to Protecting Their Broadcasting Rights Against Illegal Streaming," Marquette Sports Law Review, Volume 24 Issue 2 Spring (2014), p.456, accessed April 15, 2019, https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1623&context=sportslaw.
[326] Quintais," Global Online Piracy Study Legal Background Report," p.94.

information via a communication network", "hosting information provided by a recipient of the service", "video-on-demand" etc.[327] ECJ also confirmed that online marketplace,[328] social networking platform,[329] also falls under notion of service provider. However when E-Commerce Directive notion of service provider is broad, the directive limit 'safe harbor" exceptions only to three types of services: 'mere conduit', 'caching' and 'hosting',[330] the liabilities of others intermediaries out of this classification remains unclear.

Article 14 of E-Commerce Directive introduced European 'notice-and-take-down system'.[331] The system is based on two conditions namely 'knowledge' and 'reaction'. According to the 'knowledge' condition a service provider is not liable for the third party illegal content if it does not have "actual knowledge" or not "aware of facts or circumstances" of illegal character of the content. The notion of "actual knowledge" given rise for different interpretations among them that such knowledge could be obtained only through "a court order", "notice" or "even in the absence of the notice on the basis of the "general awareness" that site host illegal information". [332]

'Reaction' condition required "expeditious" removing of content or disable access after obtaining "knowledge".[333] The Directive is not specified what is "expeditious" reaction. Some of the Member States put a specific timeframes for "expeditious" reaction which vary from 12 hours in Hungary to 72 hours in Spain.[334] Such lack of harmonization in EU notice-and-take-down procedure constitutes uncertainty among EU members.[335] Fragmentation of rules for the procedure across EU and inveteracy of Directive to new technological developments slow down the growth within EU.[336]

The further development of notice-and-take-down procedure is necessary in order to protect sports organizers against illegal live streaming of sports events. The well-established

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[327] E-commerce Directive, Recital 18.
[328] Case C-324/09, L'Oréal SA v eBay International AG, (2011): para. 109.
[329] C-360/10, Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM) v Netlog NV, (2012), para. 27.
[330] E-commerce Directive, Art.12-14.
[331] COMMISSION STAFF WORKING DOCUMENT Online services, including e-commerce, in the Single Market, SEC(2011) 1641/2, (2011), p.25, accessed April 15, 2019, http://ec.europa.eu/transparency/regdoc/rep/2/2011/EN/SEC-2011-1641-2-EN-MAIN-PART-1.PDF.
[332] Ibid., p. 33.
[333] E-commerce Directive, Article 14(2).
[334] COMMISSION STAFF WORKING DOCUMENT Online services, including e-commerce, in the Single Market, SEC(2011) 1641/2, (2011), p.44, accessed April 15, 2019, http://ec.europa.eu/transparency/regdoc/rep/2/2011/EN/SEC-2011-1641-2-EN-MAIN-PART-1.PDF.
[335] Ibid., p.25.
[336] Commission Staff Working Document, "A Digital Single Market Strategy for Europe - Analysis and Evidence", SWD(2015) 100 final, 6 May 2015 (2015), pp.55-56, accessed April 15, 2019, file:///C:/Users/%D0%92%D0%BB%D0%B0%D0%B4/Downloads/DSM_Staff%20Working%20doc%20(2).pdf

procedure will benefit sports organizers in their main aim – rapid removal or blocking illegal live streaming. From the view point of sports events organizers they need effective and appropriate tools to remove live stream the illegality of which they can confirm. They also emphasized on insufficient speed of existing removal system.[337]

The possible development of European notice-and-take-down mechanism was demonstrated in new Directive on Copyright and Related Rights in the Digital Single Market (Digital Single Market Directive). The applicability of new procedure was limited to "online content-sharing service provider" which were defined as service provider "which the main or one of the main purposes is to store and give the public access to a large amount of copyright-protected works or other protected subject matter uploaded by its users, which it organizes and promotes for profitmaking purposes".[338] Non-profit service providers were excluded from the application of new mechanism. The notion "large amount of copyright-protected works" should be considered on a case-by-case basis.[339] The Directive made clear notice that it does not affect applicability of Article 14 E-Commerce Directive to the service providers which fall outside of Digital Single Market Directive.[340]

Digital Single Market Directive introduced new obligation for the online content-sharing service provider to "made […] best efforts to ensure the unavailability of specific works and other subject matter".[341] Such provision was put in place in order to protect rightholders and to oblige online content-sharing service provider to conclude license agreement with the rightholders. Through such agreements righholders "should receive appropriate remuneration" for their works available on the service.[342] When such authorization and license was not received by online content-sharing service provider it has to make 'best efforts' for unavailability of such works on its service. Legislator provides very streamlined criteria for assessment of "best efforts". Directive emphasized that service provider have to act as diligent operator to prevent occurrence of illegal content and rely on best industry practices, current developments and take into account principle of proportionality. 'Best efforts' also depend on the size of the service,

[337] European Commission's Impact Assessment on measures to improve the effectiveness of the fight against illegal content online: Premier League Submission, (2018), p. 3, accessed April 20, 2019, https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-1183598/feedback_en?p_id=179092
[338] Position of the European Parliament adopted at first reading on 26 March 2019 with a view to the adoption of Directive (EU) 2019/… of the European Parliament and of the Council on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, (2019), Art.1, accessed April 20, 2019, http://www.europarl.europa.eu/doceo/document/TA-8-2019-0231_EN.html
[339] Ibid., Recital 63.
[340] European Parliament legislative resolution of 26 March 2019 on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market (COM(2016)0593 – C8-0383/2016 – 2016/0280(COD)), (2019), Recital 65.
[341] Ibid. Article 17 (4)(b)
[342] Ibid., Recital 61

"state of the art as regards existing means, including potential future developments" and cost of such means.[343]

Such explanation of 'best efforts' with reference to the current and future developments and best industry practices led to the conclusion that the Legislator gave green light for automated identification and removal processes also known as digital right management.[344] Such system is based on different automated algorithms which, followed on the command, either remove or otherwise block the content.[345]

Among online content-sharing service provider within the meaning of Digital Single Market Directive there are two well-known DRM systems: YouTube's Content ID and Facebook's Rights Manager. For instance Content ID system scanned uploaded videos against files submitted by rightholders, if any matches with righholders' works were identified rightholders have three possible options: block video on platform, monetize video by receiving ads revenue from it or track video statistic.[346] Digital Single Market Directive also obliged rightholders to provide necessary information in order for services make theirs "best efforts".

Article 17 also stated that online service providers actions shall not lead to general monitoring obligation. Directive does not clarify which action should be considered as 'general' monitoring obligation. The same obligation is stated in Article 15(1) of E-Commerce Directive. The Recital 47 in E-Commerce Directive clarify that monitoring obligations could be possible in "specific" cases and in particular by orders of national authorities, but not specify what is procedure for such distinction between "general" and "specific" obligation. [347] ECJ in case SABAM v Netlog concluded that filtering system would lead to active monitoring of all user data and would result in general monitoring obligation which is prohibited under Article 15(1).[348] In the same time Commission in their Communication Tackling Illegal Content Online stated that it encourage proactive detection measure and particularly emphasized that automatic tools and filters could be used for the identification of illegal content.[349] It seems unclear when

[343] Ibid., Recital 66.
[344] James Rickard, "Going Live: The Role Of Automation In The Expeditious Removal Of Online Content," Boston University Law Review, Vol. 96 (2016): p.2194, accessed April 20, 2019, https://www.bu.edu/bulawreview/files/2017/01/RICKARD.pdf
[345] Ibid.
[346] "How Content ID works," YouTube Help, accessed April 20, 2019, https://support.google.com/youtube/answer/2797370?hl=en-GB&ref_topic=2778544
[347] E-commerce Directive, Recital 47.
[348] Case C-360/10, SABAM v Netlog, (2012), para. 38.
[349] Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions Tackling Illegal Content Online Towards An Enhanced Responsibility Of Online Platforms, (2017): p.12-13

proactive monitoring measures constitute "specific" monitoring as opposed to prohibited "general".[350]

Sports events organizers have confirmed effectiveness of DRM system in fighting against illegal live streaming. One of the most effective tools for identification of illegal live streams is digital video fingerprinting. Such technology uses compress characteristic of particular video feed to identify any video which matching main fingerprint. Advanced technology gives possibility to use live fingerprinting.[351] Sports events organizers upload a video fingerprint of live broadcast in DRM system which than identify matching materials.[352] According to the FAPL data DRM systems helped prevent uploading over 37,000 of infringing live streams during 2017/2018 season.[353] The possibility that identified content could fall under exception was provided in Article 17(7). Content with the aim of quotation, criticism, review, caricature, parody or pastiche are excluded from removing obligation.[354] However, it remains unclear to what extend current DRM system could identified the exceptions provided in the Directive.

Digital Single Market Directive noticed that even "best efforts" were made online service providers should act expeditiously to remove protect work from the service upon receiving notice from rightholders. The legislator is not specified what kind of notice should be and how it should be provided to online service. In their Communication, the Commission stated that online platforms are welcomed to introduce effective mechanisms for the submission of online notices. Such notices should contained precise reasons why content is illegal and identify its location. Mechanism should also provide a confirmation of receipt for possible upcoming judicial proceedings.[355] Large amount of online service provider already introduced online notice system.[356] Sports events organizers went further and emphasized on the needs to introduce live takedown tools in order to remove content in a real time.[357] Commission's Communication also mentioned about system of "trusted flaggers" as specialized professionals with expertise in

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[350] Quintais," Global Online Piracy Study Legal Background Report," p.35
[351] Update on Digital Piracy of Sporting Events, NetResult Ltd 2011, p. 32-33.
[352] Rickard, "Going Live: The Role Of Automation In The Expeditious Removal Of Online Content," p.2195.
[353] European Commission's Impact Assessment on measures to improve the effectiveness of the fight against illegal content online: Premier League Submission, (2018), p.4, accessed April 20, 2019, https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-1183598/feedback_en?p_id=179092
[354] Directive on copyright and related rights in the Digital Single Market, (2019), Art. 17(7).
[355] Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions Tackling Illegal Content Online Towards An Enhanced Responsibility Of Online Platforms, (2017): p. 9-10.
[356] James Rickard, "Going Live: The Role Of Automation In The Expeditious Removal Of Online Content," p.2203.
[357] European Commission's Impact Assessment on measures to improve the effectiveness of the fight against illegal content online: Premier League Submission, (2018), p.3, accessed April 20, 2019, https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-1183598/feedback_en?p_id=179092

identifying illegal content. The notices provided by "trusted flaggers" should be removed fast from the platform.[358] In turn, sports events organizers stated that EU should introduced "trusted flagger" policy with set of criteria for determination of "trusted flagger". To those who would go under criteria the live takedown tools with immediately removing of illegal content should be granted.[359] "Trusted flaggers" system could bring more light on expeditiously removing notion mentioned in both Article 17(4) of Digital Single Market Directive and Article 14(2) of E-Commerce Directive. Whether "expeditions" of actions of online service providers treated differently in different Member States and even in different subject matter of notices, sports events organizers repeatedly reminded about time sensitivity of their broadcast and asked for live takedown procedure.[360] FAPL mentioned that expeditiously should take no more than 10 minutes after receipt of proper takedown notice.[361]

Article 17 of Digital Single Market Directive also introduced so-called stay-down procedure. 'Best efforts' of online service providers should be distributed also in order "to prevent their future uploads".[362] The prevention of future uploading should be based on "relevant and necessary information provided by rightholders for that purpose".[363] Commission mentioned that automatic stay-down procedure have to allow re-uploads in cases when content was changed and brought in conformity with requirements. Commission also emphasized on reversibility safeguards in order to prevent erroneous removals. Online service providers have to provide use of safeguard technology in services' terms of use.[364] Stakeholders clarified methods through which stay-down procedure can be done: closing accounts, verification of contact details of repeat infringers, re-upload prevention by fingerprinting technology etc.[365]

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[358] Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions Tackling Illegal Content Online Towards An Enhanced Responsibility Of Online Platforms, (2017): p. 9

[359] European Commission's Impact Assessment on measures to improve the effectiveness of the fight against illegal content online: Premier League Submission, (2018), p.5, accessed April 20, 2019, https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-1183598/feedback_en?p_id=179092

[360] Rickard, "Going Live: The Role Of Automation In The Expeditious Removal Of Online Content," p.2186.

[361] European Commission's Impact Assessment on measures to improve the effectiveness of the fight against illegal content online: Premier League Submission, (2018), p.5, accessed April 20, 2019, https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-1183598/feedback_en?p_id=179092

[362] Directive on copyright and related rights in the Digital Single Market, (2019), Article 17 (4)(c).

[363] Ibid., Recital 66.

[364] Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions Tackling Illegal Content Online Towards An Enhanced Responsibility Of Online Platforms, (2017): p.19.

[365] MPA Commission Inception Impact Assessment: Measures to further improve the effectiveness of the fight against illegal content online, (2018): p.8, accessed April 20, 2019, file:///C:/Users/%D0%92%D0%BB%D0%B0%D0%B4/Desktop/Docs/Master%20thethis%20update/Master%20thesis/opinions/mpa_submission_to_2018_commission_iia_improve_the_effectiveness_of_the_fight_against_illegal_content_online_final.pdf

To protect users from erroneous removing of uploaded content Digital Single Market Directive presented counter-notice mechanism. Directive obliged online service providers to create effective complaint tools for users in order to give them possibility to challenge illegally removed content, for instance where their content fall under exception or limitation to copyright. Every complaint through such tool should be examined without undue delay and be subject to human review.[366] Online service providers should reply for every counter-notice and if decision for restoring the content is negative they should provide adequate reasoning.[367]

Current notice-and-take-down procedure covers only hosting services both by E-Commerce Directive and Digital Single Market Directive. Stakeholders repeatedly notified that such procedure should cover the largest number of intermediaries.[368] Whether aggregators and indexing sites for illegal live streaming of sports events remain one of the main concerns for sports events organizers and rightholders[369] the need for notice-and-take-down procedure should spread also to indexing websites. US Digital Millennium Copyright Act provide such procedure besides hosting services to "information location tools" which define as "provider referring or linking users to an online location containing infringing material or infringing activity, by using information location tools, including a directory, index, reference, pointer, or hypertext link".[370] The provision of notice-and-take-down procedure for the new type of service providers will benefit sports events organizers in expeditious removing of linking for illegal live streaming from indexing service providers (Google for instance) which based in the local jurisdiction.

Stakeholders also stressed the need to tackle anonymity online. Vast majority of intermediaries enjoy doing business online contrary to the Article 5 of the E-Commerce Directive. Stakeholders proposed to grant benefit from safe harbors to intermediaries under E-Commerce and Digital Single Market Directives only if they listed valid contact details.[371] Furthermore, stakeholders emphasized on the need to oblige intermediaries to verify their

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[366] Directive on copyright and related rights in the Digital Single Market, (2019): Recital 70, Art. 17(9).
[367] Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions Tackling Illegal Content Online Towards An Enhanced Responsibility Of Online Platforms, (2017): p.17.
[368] European Commission's Impact Assessment on measures to improve the effectiveness of the fight against illegal content online: Premier League Submission, (2018), p.2, accessed April 20, 2019, https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-1183598/feedback_en?p_id=179092; MPA Commission Inception Impact Assessment: Measures to further improve the effectiveness of the fight against illegal content online, (2018): p.3.
[369] Horner, "DMCA: Professional Sports Leagues' Answer to Protecting Their Broadcasting Rights Against Illegal Streaming," (2014), p. 448-449.
[370] U.S. Copyright Office, The Digital Millennium Copyright Act of 1998, PUBLIC LAW 105–304—OCT. 28, 1998 , (1998), §§ 512(d), accessed April 20, 2019, https://www.govinfo.gov/content/pkg/PLAW-105publ304/pdf/PLAW-105publ304.pdf
[371] MPA Commission Inception Impact Assessment: Measures to further improve the effectiveness of the fight against illegal content online, (2018): p.8

customers. Stakeholders called EU legislator to expand know-your-customer obligation to online intermediaries, specifically upon register of new user the full contact details should be obtained and upon notifying of infringement content by rightholders or enforcement body the intermediaries should provide user's contact details.[372]

Commission in their Communication noticed that if online service providers will face difficulties in determination of legality of a particular content they should benefit from submitting such content for the revision to a third party. It could be either self-regulatory bodies or competent authorities.[373] FAPL in its submission went further and suggested to establish EU regulator of notice-and-take-down system. It should be deal not only with revision of legality of the content provided by intermediaries but deal with the cases when notices are ignored by particular intermediaries. Such authority should have a right to force relevant intermediaries to remove illegal content. EU regulator would facilitate fast, fair and inexpensive tool to tackle online piracy. FAPL mentioned that it could work as HADOPI in France or AGCOM in Italy.

HADOPI is an independent agency which deals with P2P copyright infringements. Rightholders send to the HADOPI IP address of infringer and claim about his infringement, when HADOPI verified the legality of claim it transfer IP address to the internet service provider with obligation to disclose subscriber information no later than eight days after receiving. When end-user is identified HADOPI send first of up to three notifications to him. Notification contains information about infringement and information about possible penalties. If end-user repeats infringement within six month from the first notice the second notification will be sent in a form of recorded letter. The third notification within a one year form second one constitutes a gross negligence violation which is punished by a penalty up to 1500 euro and could be forward to French Penal Court. HADOPI laws also provide with possibility to issue notice-and-take-down procedure to internet service providers and search engines against the sites which infringed copyright. [374] In turn, AGCOM receive report from rightholders about illegal content and notify both internet service provider and uploader about the need to remove such content. If internet

[372] European Commission's Impact Assessment on measures to improve the effectiveness of the fight against illegal content online: Premier League Submission, (2018), p.7, accessed April 20, 2019, https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-1183598/feedback_en?p_id=179092;
[373] Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions Tackling Illegal Content Online Towards An Enhanced Responsibility Of Online Platforms, (2017): p.15.
[374] International Comparison of Approaches to Online Copyright Infringement: Final Report, Intellectual Property Office (2015), pp.44-48, accessed April 20, 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/549462/International_Comparison_of_Approaches_to_Online_Copyright_Infringement.pdf

service provider does not remove infringed content it could receive fine from EUR 10,000 to 250,000. Procedure takes from 12 to 35 days.[375]

Commission in their Communication noticed absence of EU harmonized approach for removing illegal content and emphasized for the need of aligned approach in combating illegal content which would benefit the development of the Digital Single Market.[376] In further Impact Assessment the Commission identified two possible options for actions either implements "sector-specific legislation(s) on certain type(s) of illegal content" or "horizontal legislation addressing targeted issues". Horizontal legislation option includes harmonized rules of notice and action procedure and proactive measures.[377] Sports events organizers supported the need for horizontal legislation for EU notice-and-take-down procedure and noticed that legislative obligations "would significantly help in achieving the objective of removing illegal online content quickly, effectively and fairly".[378] Commission in their Communication, Recommendation and Impact Assessment stressed out that it would monitor the need for additional measure including legislative measures.

The author of this thesis thinks, taking into account that the existing EU notice-and-take-down system was adopted almost 20 years ago and does not address to the new challenges for removing illegal content in EU market, the introduction of advanced developed approached is a need. Potential frames for such new system were outlined in new Digital Single Market Directive. However, whether the scope of application for the Directive was limited only to the online content-sharing service providers the further legislation should cover all affected providers of online services including linking site operators. The basis for the new notice-and-take-down should be automated identification and removal processes and trusted flaggers' notifications, such combination better address the main concern of sports events organisers namely time sensitivities of sport broadcasts and expedition remove of infringement online content.

To sum up, rapid development of technology introduced new possibilities for the spectators of sporting events to stream sports events from the dedicated venues. As last data showed the scale of this problem only increasing and caused economic harm not only to

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[375] Ibid., pp.56-58.
[376] Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions Tackling Illegal Content Online Towards An Enhanced Responsibility Of Online Platforms, (2017): p.5.
[377] Inception Impact Assessment: Measures to further improve the effectiveness of the fight against illegal content
Online, (2018), pp.4-5, accessed April 20, 2019, https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-1183598_en
[378] European Commission's Impact Assessment on measures to improve the effectiveness of the fight against illegal content online: Premier League Submission, (2018), p.8.

professional sports organizers but what is more crucial for the minor sports which try to reach niche audience. The most appropriate possibility to tackle the live streaming from the dedicative venues is to introduce new European neighbouring right for sports events organizers over their sports events. Such right will benefit sports events organizers both with existing challenges and also with nearest technical developments, for instance virtual reality broadcasting. With the case of illegal live streaming of sport broadcasting, sports events organizers called notice-and-take-down system as the most effective enforcement measure. However, the need for the new EU notice-and- take-down legislation which would include proactive measures and new notice and action procedures was confirmed by the Commission and further developed by sports events organizers. New Copyright and Related Rights in the Digital Single Market Directive introduced possible development of the older notice-and-take-down procedure but in the same time it does not answer for all the challenges with which sports events organizers are stacking.

CONCLUSIONS

1. Sports events as such are not protected by copyright or any other intellectual property rights all over EU. Sports events do not meet originality standard for copyright protection defined by ECJ, namely “author’s own intellectual creation”. Strict rules of the game leave no room ‘for free and creative choice’ and ‘personal stamp of the author’ as a criteria for copyright protection. In the same time ECJ emphasized on unique character of sports events which worth for protection.
2. Laws of the few Member States introduced sui generis rights for sports events organizers in order to protect theirs risky and large investments in conducting of sports events. Some of the Member States grant sports events organizers ownership rights over recording and broadcasting by any means of their events. Italian approach with introduction of new neighbouring right for sports events organizers over their events seems the most appropriate due to the established set of rights for neighbouring protection and defined term of such protection. Whether the sui generis rights granted in some Member States do not constitute well established framework of rights through such protection, EU in turn provide precise set of rights granted through the neighbouring rights namely reproduction, making available to the public and fixation right.
3. Sports events organizers and rightholders can enjoy protection over the audiovisual recording of sports events. When copyright protection for audiovisual recording of sports events remains uncertain among Member States due to the possible lack of personal stamp and creative choices of the director of sport event recording, sports events organisers can rely on unique EU neighbouring right: film producer’s right to the first fixation of a film.
4. Rapid development of technology caused new threat for sports events organizers and rightholders, namely illegal live streaming of sports events from dedicated venues. Economic rights in live sports events are tremendous time sensitive and exhausted almost during the time of the event. The rapid blocking of illegal live stream is a main need for sports events organizers. Without intellectual property rights over their events they do not have legal protection with a third party effect for illegal live streaming from dedicated venues. Introducing of new neighbouring right for sport event organizers in EU level will solve the current situation.
5. Operational system of illegal live streaming involves a large amount of participants. Enforcement procedure against end points of illegal streaming chain often times consuming, expensive and even impossible due to the lack of jurisdiction. In turn,

enforcement procedure against intermediaries, main aim of which is to stop infringement made by the users of intermediaries' services often through notice-and-take-down system, are more appropriate decision for blocking or removing illegal content online.

6. Existing EU notice-and-take-down system does not meet the challenges of digital piracy market. Sports events organizers and other stakeholders emphasized that they need more reliable and faster detection system to combat online piracy and protect values of theirs rights. EU legislator introduced its vision on further development of notice-and-take-down procedure in new Digital Single Market Directive. However, current situation with illegal live streaming insist on introduction EU horizontal law for notice-and-take-down system.

RECOMMENDATIONS

1. Adopt a new European neighbouring right for protection of sports events organizers over their events. Such right will grant reproduction, making available to the public and fixation right to the sports organizers. New related right will help sport event organizers to manage with new technological developments in the market of illegal live streaming of sports events and possible upcoming thread connected with live sport virtual reality broadcasts.
2. Introduce new EU horizontal legislation for notice-and-take-down system. EU harmonized approach will effectively reduce illegal content online. First of all such system should cover not only 'host' services and 'online content sharing services', but cover all types of intermediaries including 'linking' and 'online location services'. Legislation should provide obligation for live take-down tool which will facilitate removing of infringing online content in real time. The operation of live take-down tool should base on notification from trusted flaggers. Legislation should set list of criteria to determine who falls under the notion of trusted flaggers. The maximum timeframes for expeditious removal through basic notice-and-take-down procedure should be established, with the list of different timeframes for different subject matter of infringement. Notice-and-stay-down procedure should be established to facilitate rights of rightholders against repeated infringers. The legislation should introduce EU regulator for notice-and-take-down system which will be cope with notices if intermediaries will be ignore take-down notices. Such regulator should have a power to force intermediaries to remove or block the infringing content from theirs services.

LIST OF BIBLIOGRAPHY

Articles

1. Cornelius, Steve. "The Legal Nature of Media Rights in Sport: Part 2." Global Sports Law and Taxation Reports 8, (2015): 8-16, accessed April 15, 2019, https://www.academia.edu/11865814/The_Legal_Nature_of_Media_Rights_in_Sport_Part_2
2. Das, Proloy K. "Offensive Protection: The Potential Application of Intellectual Property Law to Scripted Sports Plays." Indiana Law Journal, Volume 75, Issue 3 (2000):1073-1101, accessed April 15, 2019, https://www.repository.law.indiana.edu/ilj/vol75/iss3/7
3. Dreier, Thomas. "GERMANY: Creating New Property Rights on the Basis of General Legal Concepts - Without Limits?" 2 JIPITEC (2011): 152-156, accessed April 15, 2019, https://www.jipitec.eu/issues/jipitec-2-2-2011/3091/jipitec%202%20-%20cd%20-%20dreier.pdf
4. Edelman, Marc. "From Meerkat to Periscope: Does Intellectual Property Law Prohibit the Live Streaming of Commercial Sporting Events? " Columbia Journal of Law & the Arts, Vol. 39, No. 4 (2016): 469-495. https://doi.org/10.7916/D89Z95CW.
5. Elam, Viola. "Sporting events as dramatic works in the UK copyright system." Entertainment and Sports Law Journal Vol.13, (2015): 1-17. DOI: 10.16997/eslj.1.
6. Garcia, Giuliana R. "He Shoots, He Scores…and Received Copyright Protection?" Den. U. Sports & Ent. L.J. (Fall 2011): 81-116, accessed April 15, 2019, https://www.law.du.edu/documents/sports-and-entertainment-law-journal/issues/11/Garcia-FINAL-Online-Version.pdf.
7. Gupta, Ankur. "Copyright eligibility of sports "moves": A far stretch?" (2016): 1-11, accessed April 15, 2019, https://www.academia.edu/35719183/Copyright_Eligibility_of_Sports_Moves_A_Far_Stretch_Ankur_Gupta
8. Hopkins, Marie. "Live Sports Virtual Reality Broadcasts: Copyright and Other Protections." 16 Duke Law & Technology Review (2018): 141-160, accessed April 20, 2019, https://scholarship.law.duke.edu/dltr/vol16/iss1/5
9. Horner, Stephanie N. "DMCA: Professional Sports Leagues' Answer to Protecting Their Broadcasting Rights Against Illegal Streaming." Marquette Sports Law Review, Volume 24 Issue 2 Spring (2014): 435-462, accessed April 15, 2019, https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1623&context=sportslaw

10. Hsiao, Luke and Ayers Hudson. “The Price of Free Illegal Live Streaming Services.” Cornell University, (3 January 2019): 1-10. https://arxiv.org/abs/1901.00579

11. Kariyawasam Kanchana, Tsai Matthew. “Copyright and live streaming of sports broadcasting.” International Review of Law, Computers & Technology, 31:3 (2017): 265-288. DOI: 10.1080/13600869.2017.1299553.

12. Liu Yong, Guo Yang and Liang, Chao. “A survey on peer-to-peer video streaming systems.” Article in Peer-to-Peer Networking and Applications (March 2008): 18-28. DOI: 10.1007/s12083-007-0006-y

13. Margoni, Thomas. “The Harmonisation of EU Copyright Law: The Originality Standard.” University of Glasgow - School of Law – CREATe (June 29, 2016). http://dx.doi.org/10.2139/ssrn.2802327

14. Margoni, Thomas. “The protection of sports events in the EU: Property, intellectual property, unfair competition and special forms of protection.” IIC - International Review of Intellectual Property and Competition Law, 47(4) (2016): 386-417. doi:10.1007/s40319-016-0475-8.

15. Mellis, Michael. “Internet Piracy of Live Sports Telecasts” 18 Marq. Sports L. Rev. 259 (2008): 259-284, accessed April 15, 2019, http://scholarship.law.marquette.edu/sportslaw/vol18/iss2/2,

16. Rickard, James. “Going Live: The Role Of Automation In The Expeditious Removal Of Online Content.” Boston University Law Review, 96(60) (2016): 2171-2210, accessed April 15, 2019, https://www.bu.edu/bulawreview/files/2017/01/RICKARD.pdf

17. van Eechoud, Mireille. “Along the Road to Uniformity Diverse Readings of the Court of Justice Judgments on Copyright Work.” 3 JIPITEC, 1 (2012): 60-80, accessed April 15, 2019, https://www.jipitec.eu/issues/jipitec-3-1-2012/3322/eechoud.pdf

18. Zubair Rafique M., van Goethem Tom, Joosen Wouter, Huygens Christophe and Nikiforakis Nick. “It's Free for a Reason: Exploring the Ecosystem of Free Live Streaming Services.” Department of Computer Science, Stony Brook University, (2016): 1-15. DOI: 10.14722/ndss.2016.23030.

Books

1. Bently, Lionel, and Brad Sherman. *Intellectual property law 4th Edition*. Oxford University Press, 2014.

2. Blázquez, Francisco Javier Cabrera,Maja Cappello, Fontaine Gilles, Sophie Valais. *Audiovisual sports rights – between exclusivity and right to information*. IRIS Plus 2016-2, European Audiovisual Observatory, Strasbourg, 2016. https://rm.coe.int/1680788a5d.

3. Goldstein, Paul and Hugenholtz P. Bernt. *International Copyright: Principles, Law, and Practice 3 edition*, New York: Oxford University Press, 2013

4. Gurovits, András. *The Sport law review*, Third edition. Law Business Research, 2017.

5. Lewis, Adam and Taylor Jonathan. *Sport: Law and Practice 2nd edition*. Tottel Publishing, London, 2008.

6. Quintais, João Pedro. *Global Online Piracy Study Legal Background Report.*" Faculty of Law, University of Amsterdam, Institute for Information Law, 2018, accessed April 20, 2019, https://www.ivir.nl/publicaties/download/Global-Online-Piracy-Study-Legal-Background-Report.pdf.

7. Van Eechoud Mireille, Hugenholtz P. Bernt, van Gompel Stef, Guibault Lucie and Helberger Natali. *Harmonizing European Copyright Law: The Challenges of Better Lawmaking*. Information Law Series 19, Alphen aan den Rijn: Kluwer Law International, 2009.

8. Van Gompel, Stef "Creativity, autonomy and personal touch: A critical appraisal of the CJEU's originality test for copyright. In *The Work of Authorship*, edited by Mireille van Eeschoud, 95-143. Amsterdam University Press, Amsterdam, 2014, accessed April 20, 2019, www.ivir.nl/publicaties/download/1468

9. Van Rompuy, Ben and Margoni, Thomas. *Study on sports organisers' rights in the European Union*.T.M.C. Asser Instituut / Asser International Sports Law Centre Institute for Information Law - University of Amsterdam, 2014.

Court decisions

1. BGH 8 November 2005, KZR 37/03, *Hörfunkrechte*, 2003.

2. Case C 5/08, *Infopaq International A/S v Danske Dagblades Forening*, 2009 EU:C:2009:465.

3. Case C-393/09, *Danske Dagblades Forening, Bezpečnostní softwarová asociace v. Ministerstvo kultury*, 2010 EU:C:2010:816.

4. Case C-145/10, *Eva-Maria Painer v. Standard VerlagsGmbH*, 2011 EU:C:2011:798.

5. Case C-604/10, *Football Dataco v. Yahoo*, 2012 EU:C:2012:115.

6. Case C-607/11, *ITV Broadcasting Ltd, ITV 2 Ltd, ITV Digital Channels Ltd, Channel 4 Television Corporation, 4 Ventures Ltd, Channel 5 Broadcasting Ltd, ITV Studios Ltd v TVCatchup Ltd*, 2013 EU:C:2013:147.

7. Case C-279/13, *C More Entertainment AB v Linus Sandberg*, 2015 EU:C:2015:199

8. Cases C 201/11 P, C 204/11 P and C 205/11 P, Opinion of Advocate General Jääskinen, *Union of European Football Associations (UEFA), Fédération Internationale de Football Association (FIFA) v European Commission*, 2012 EU:C:2012:786.

9. Case C 466/12, Nils Svensson, Sten Sjögren, Madelaine Sahlman, Pia Gadd v Retriever Sverige AB, 2014 EU:C:2014:76.

10. Case C 360/13, Public Relations Consultants Association Ltd v Newspaper Licensing Agency Ltd and Others, 2014 EU:C:2014:1195.

11. Case C-527/15, Stichting Brein v Jack Frederik Wullems, 2017 EU:C:2017:300.

12. Case C-160/15, GS Media BV v Sanoma Media Netherlands BV, 2016 EU:C:2016:644.

13. Case C 610/15, Stichting Brein v Ziggo BV, XS4ALL Internet BV, 2017 EU:C:2017:456.

14. Case C-324/09, L'Oréal SA v eBay International AG, 2011 EU:C:2011:474.

15. Case C-360/10, Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM) v Netlog NV, 2012 EU:C:2012:85

16. C01/255HR, Hoge Raad, *KNVB v Feyenoord*, 23 May 2003, NJ 2003, 494, 2003.

17. Hoge Raad, 23-10-1987, nr. 12916: *KNVB v NOS*, 1987.

18. Joined Cases C- 403/08 and 429/08, *Football Association Premier League Ltd and others v QC Leisure and others and Karen Murphy v Media Protection Services Ltd*,2011 ECR-I-9083.

19. Joined Cases C-236/08 to C-238/08, Google France SARL, Google Inc. v Louis Vuitton Malletier SA, 2010 EU:C:2010:159.

Electronic recourses

1. Audiovisual rights in sports events An EU perspective, Briefing March 2017, accessed April 15, 2019. http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599320/EPRS_BRI(2017)599320_EN.pdf
2. Anderson, Cammy. "Stadium Ownership In Italy Compared To Other Leagues In Europe." Sempreinter, January 22, 2019, accessed April 15, 2019.

https://sempreinter.com/2019/01/22/stadium-ownership-in-italy-compared-to-other-leagues-in-europe/

3. Andrew, James. “Premier League vow to take action against fans broadcasting games on Periscope after one FA Cup transmission attracts 139,000 viewers.” Mail Online 3 February 2017, accessed April 20, 2019, https://www.dailymail.co.uk/sport/football/article-4188294/Premier-League-action-against-fans-using-Periscope.html
4. Background Report on Digital Piracy of Sporting Events, NetResult, London 2008, accessed April 15, 2019, https://studylib.net/doc/8553978/report-on-digital-piracy-of-sporting-events.
5. Boyle, Raymond. “Battle for control? Copyright, football and European media rights.” Media, Culture & Society April 2015 37 (2015), p.11, accessed April 20, 2019, https://www.create.ac.uk/publications/copyright-football-and-european-media-rights/.
6. “Broadcasting & Media Rights in Sport,” WIPO, accessed April 15 2019, https://www.wipo.int/ip-sport/en/broadcasting.html.
7. Brown, Aaron. “Kodi Box WARNING - Threat to Sky TV as Premier League fans move to free online streams.” Express, July 5, 2017, accessed April 15 2019, https://www.express.co.uk/life-style/science-technology/824454/Kodi-Box-Sky-Sports-Premier-League-Watch-Free-Live-Stream.
8. “Copyright: report highlights successful EU-wide recognition of directors as "authors" of films.” IP/02/1824, Brussels, 9th December 2002, accessed April 15, 2019, http://europa.eu/rapid/press-release_IP-02-1824_en.htm?locale=en
9. Costello, Sam. “Internet Streaming: What It Is and How It Works.” LifeWire, December 17, 2018, accessed April 15, 2019, https://www.lifewire.com/internet-streaming-how-it-works-1999513
10. “Directing Live Events.” SVNS, accessed April 15, 2019, http://www.svnsportsbroadcasting.com/production-broadcast/53-directing-live-events
11. Ferraz Vazquez, Rafael. “Sport and broadcasting rights: adding value.” WIPO Magazine, April 2013, accessed April 15, 2019, https://www.wipo.int/wipo_magazine/en/2013/02/article_0005.html.
12. Fighting Illegal Streaming Analysis of the World Football Tournament, Interactive Orca, 2018, accessed April 20, 2019, https://www.viaccess-orca.com/hubfs/WC%20Reports%202018/Fighting-Illegal-Streaming-A-Viaccess-Orca-Report.pdf.
13. Granados, Nelson. “5G: The Next Tech Disruption In Media And Entertainment Is Coming.” Forbes, July 17, 2017, accessed April 20, 2019,

https://www.forbes.com/sites/nelsongranados/2017/07/17/5g-the-next-tech-disruption-in-media-and-entertainment-is-coming/#353e2a270260.

14. International Comparison of Approaches to Online Copyright Infringement: Final Report, Intellectual Property Office 2015, accessed April 20, 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/549462/International_Comparison_of_Approaches_to_Online_Copyright_Infringement.pdf.
15. "IOC Marketing: Media Guide, Olympic Games Rio 2016.", accessed April 15, 2019 https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Games/Summer-Games/Games-Rio-2016-Olympic-Games/Media-Guide-for-Rio-2016/IOC-Marketing-Media-Guide-Rio-2016.pdf.
16. IPO Call for views: Illicit IPTV Streaming Devices, BT submission, 6 april, 2017, accessed April 15, 2019, https://www.gov.uk/government/news/pressure-grows-on-producers-of-illegal-streaming-devices-and-thieves-of-paid-for-content.
17. Kokorina, Tatyana. "All about fighting piracy. How not to lose millions on illegal broadcasts." Sport Connect, 28 November, 2017, accessed April 20, 2019, http://sport-connect.ru/case/piratstvo.
18. Lynn Rodrigues, Airina and Pahl, David R. "In-venue streaming and broadcasting of live sporting events – key legal issues for sports clubs and leagues." DLA Piper, 25 March 2019, accessed April 20, 2019, https://www.dlapiper.com/en/us/insights/publications/2019/03/in-venue-streaming-and-broadcasting-of-live-sporting-events/.
19. Margoni, Thomas. "Who owns the World Cup? The case for and against (intellectual) property rights in sports." Kluwer Copyright Blog, October 13, 2014, accessed April 15, 2019. http://copyrightblog.kluweriplaw.com/2014/10/13/who-owns-the-world-cup-the-case-for-and-against-intellectual-property-rights-in-sports/.
20. Mcdonald, Ryan. "More than 100,000 fans beat Uefa's telly ban to watch Hibs' Scottish Cup win over Hearts live on Periscope," The Scottish Sun, 22 February, 2017, accessed April 20, 2019, https://www.thescottishsun.co.uk/sport/football/628029/more-than-100000-fans-beat-uefas-telly-ban-to-watch-hibs-scottish-cup-win-over-hearts-live-on-periscope/.
21. Rosati, Eleonora. "Swedish Supreme Court has ruled that sport broadcasts are not protected by copyright." IPKat, December 26, 2016, accessed April 15, 2019, http://ipkitten.blogspot.com/2016/12/swedish-supreme-court-has-ruled-that.html.
22. "SportBusiness Consulting report finds global value of sports media rights reached $49.5bn in 2018." SportBusiness Media, 15th November 2018, accessed April 15, 2019.

https://media.sportbusiness.com/news/sportbusiness-consulting-releases-new-report-analysing-the-global-media-rights-landscape-in-2018/.

23. "Sports industry: lost in transition?PwC's Sports Survey 2018." September, 2018, accessed April 15, 2019. http://strivesponsorship.com/wp-content/uploads/2018/10/PwC-Sports-and-Esports-Survey-2018.pdf.
24. Temperton, James. "Fibre and plywood: this is how Euro 2016 is broadcast to the world." Wired, 22 June 2016, accessed April 15, 2019, https://www.wired.co.uk/article/euro-2016-how-uefa-broadcasts.
25. Update on Digital Piracy of Sporting Events 2011, Submitted in Call for Evidence to Independent Review of Intellectual Property and Growth, NetResult, London 2011, accessed April 15, 2019, https://www.wipo.int/export/sites/www/ip-sport/en/pdf/piracy_report_2011.pdf.

International instruments

1. Agreement On Trade-Related Aspects Of Intellectual Property Rights, (1995), accessed April 15, 2019, https://www.wto.org/english/docs_e/legal_e/27-trips.pdf.
2. Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979), (1979), accessed April 15, 2019, https://wipolex.wipo.int/en/text/283693.
3. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done at Rome on October 26, 1961, (1961), accessed April 15, 2019, https://wipolex.wipo.int/en/text/289795.
4. WIPO Copyright Treaty (adopted in Geneva on December 20, 1996) (2002), accessed April 15, 2019, https://wipolex.wipo.int/en/text/295157.
5. WIPO Performances and Phonograms Treaty WIPO Performances and Phonograms Treaty, adopted in Geneva on December 20, 1996, (1996), accessed April 15, 2019 https://wipolex.wipo.int/en/text/295477.

European Union instruments

1. Amendments adopted by the European Parliament on 12 September 2018 on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market, (COM(2016)0593 – C8-0383/2016 – 2016/0280(COD), Wednesday, 12 September 2018 – Strasbourg, (2018), accessed April 15, 2019, http://www.europarl.europa.eu/doceo/document/TA-8-2018-0337_EN.html

2. Commission Staff Working Document Online services, including e-commerce, in the Single Market, SEC(2011) 1641/2, (2011), accessed April 15, 2019, http://ec.europa.eu/transparency/regdoc/rep/2/2011/EN/SEC-2011-1641-2-EN-MAIN-PART-1.PDF

3. Commission Staff Working Document, "A Digital Single Market Strategy for Europe - Analysis and Evidence", SWD(2015) 100 final, 6 May 2015 (2015), accessed April 15, 2019, file:///C:/Users/%D0%92%D0%BB%D0%B0%D0%B4/Downloads/DSM_Staff%20Working%20doc%20(2).pdf

4. Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions Tackling Illegal Content Online Towards An Enhanced Responsibility Of Online Platforms, Brussels, 28.9.2017 COM(2017) 555 final, (2017), accessed April 15, 2019, https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-555-F1-EN-MAIN-PART-1.PDF

5. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Developing the European Dimension in Sport, Brussels, COM (2011) 12 final (2011), accessed April 15, 2019, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52011DC0012

6. Consolidated version of the Treaty on the Functioning of the European Union. (2012) OJ, C 326.

7. Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property. (1992) OJ, L 346.

8. Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission. (1993) OJ, L 248.

9. Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights. (2006) OJ, L 372.

10. 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. (2006) OJ, L 376.

11. 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. (2001) OJ, L 167.

12. Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs. (2009) OJ, L 111.
13. Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases. (1996) OJ, L 77.
14. 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. (2001) OJ, L 167.
15. 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. (2000) OJ L 178.
16. European Commission, White Paper on Sport COM (2007) 391 final (2007) accessed April 15, 2019, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0391
17. European Commission's Impact Assessment on measures to improve the effectiveness of the fight against illegal content online: Premier League Submission, 2018, accessed April 20, 2019, https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-1183598/feedback_en?p_id=179092
18. European Commission's Impact Assessment on measures to improve the effectiveness of the fight against illegal content online: Premier League Submission, (2018), accessed April 20, 2019, https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-1183598/feedback_en?p_id=179092
19. European Parliament legislative resolution of 26 March 2019 on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market (COM(2016)0593 – C8-0383/2016 – 2016/0280(COD)) (Ordinary legislative procedure: first reading), (2019), accessed April 20, 2019, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2019-0231+0+DOC+XML+V0//EN#BKMD-16
20. Green Paper: "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Value", Consultation Response by the Sports Rights Owners Coalition (SROC) (2013): pp. 9-11, accessed April 15, 2019, https://ec.europa.eu/digital-single-market/en/news/consultation-green-paper-preparing-fully-converged-audiovisual-world-growth-creation-and-values
21. Inception Impact Assessment: Measures to further improve the effectiveness of the fight against illegal content Online, (2018), accessed April 20, 2019, https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-1183598_en

22. MPA Commission Inception Impact Assessment: Measures to further improve the effectiveness of the fight against illegal content online, (2018), accessed April 20, 2019, file:///C:/Users/%D0%92%D0%BB%D0%B0%D0%B4/Desktop/Docs/Master%20thethis%20update/Master%20thesis/opinions/mpa_submission_to_2018_commission_iia_improve_the_effectiveness_of_the_fight_against_illegal_content_online_final.pdf

23. Position of the European Parliament adopted at first reading on 26 March 2019 with a view to the adoption of Directive (EU) 2019/… of the European Parliament and of the Council on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, (2019), Art.1, accessed April 20, 2019, http://www.europarl.europa.eu/doceo/document/TA-8-2019-0231_EN.html

24. Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market COM (2016) 593 final - 2016/0280 (COD), *Version 2*, 23/10/2018, (2018), accessed April 15, 2019, https://juliareda.eu/wp-content/uploads/2018/10/Copyright-Directive_4-column-document_ARTICLES-v2-23102018.pdf

25. Report from the Commission to the Council, the European Parliament and the Economic and Social Committee on the implementation and effects of Directive 91/250/EEC on the legal protection of computer programs, COM (2000) 199 final (2000).

26. Report on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market (COM(2016)0593 – C8-0383/2016 – 2016/0280(COD)) 29.6.2018, (2018), accessed April 15, 2019, http://www.europarl.europa.eu/doceo/document/A-8-2018-0245_EN.html?redirect.

National instruments

1. Act I on Sports, Hungary (2004), accessed April 20, 2019, http://www.aikido-szakszovetseg.hu/doc/lawonsport.pdf

2. Code du Sport, created by Ordonnance n° 2006-596 du 23 mai 2006 relative à la partie législative du code du sport, (2006), https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000792831&dateTexte=

3. Code of Copyright and Related Rights (No. 45/85, of September 17, 1985): art. 117, accessed April 15, 2019, https://www.wipo.int/edocs/lexdocs/laws/en/pt/pt002en.pdf.

4. Copyright Act of 9 September 1965 (Federal Law Gazette I p. 1273), as last amended by Article 1 of the Act of 1 September 2017 (Federal Law Gazette I p. 3346), accessed April 15, 2019, https://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html.

5. Law on physical education and sport, Bulgaria, Prom. State Gazette, no. 86, dated 18.10.2018, (2018), accessed April 20, 2019, http://mpes.government.bg/Documents/Documents/Zakoni/2019/ZAKON_NEW.pdf
6. Protezione del diritto d'autore e di altri diritti connessi al suo esercizio, LEGGE 22 aprile 1941, n. 633, accessed April 20, 2019, http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1941-04-22;633!vig=
7. U.S. Copyright Office, The Digital Millennium Copyright Act of 1998, PUBLIC LAW 105–304—OCT. 28, 1998 , (1998), accessed April 20, 2019, https://www.govinfo.gov/content/pkg/PLAW-105publ304/pdf/PLAW-105publ304.pdf

Other

1. "Get BT Sport on your Sky box," Sky, accessed April 15 2019, https://www.sky.com/help/articles/get-bt-sport-on-sky
2. FA. "FA Match Tickets" Terms and Conditions of Sale and Issue, file:///C:/Users/%D0%92%D0%BB%D0%B0%D0%B4/Downloads/fa-ticketing-conditions-of-sale-and-issue.pdf
3. Facebook. "Facebook terms of use," accessed April 20, 2019, https://www.facebook.com/legal/terms
4. Periscope. "Community rules." Periscope Community Rules, accessed April 20, 2019, https://www.periscope.tv/content
5. Streaming definition, Whatis.com, accessed April 15,2019, https://whatis.techtarget.com/definition/streaming-media
6. YouTube . "How Content ID works," YouTube Help, accessed April 20, 2019, https://support.google.com/youtube/answer/2797370?hl=en-GB&ref_topic=2778544
7. YouTube . "Terms and Conditions," accessed April 20, 2019, https://www.youtube.com/static?template=terms

ABSTRACT

This research is dedicated to the analysis of problematic aspects of copyright protection of sports events in the era of live streaming technologies. The Master Thesis evaluate the requirements for copyright protection in the EU level and analyse whether sports events as such, audiovisual recording and broadcasting of sports events are protected by copyright or neighbouring rights in the EU and in its Member States.

The main legal gap is found in the absence of copyright protection for sports events organizers in case of illegal live streaming of sports events from dedicated venues. It is stated that such situation imposes difficulties for the rightholders in removing infringement content from live streaming services. The Master Thesis concludes and recommends to adopt new EU neighbouring right for sports events organizer over their events and to introduce new European notice-and-take-down system for the faster removal of illegal content online.

Keywords: copyright, neighbouring rights, Digital Single Market Directive, sports events, notice-and-take-down system.

SUMMARY

COPYRIGHT AND SPORT BROADCASTING: NEW CHALLENGES IN THE ERA OF LIVE STREAMING

Vladyslav Holubokov

The new developments in the live streaming technologies opened possibilities for the consumers to upload live video feed from the portable devices to the Internet for the worldwide simultaneous streaming. Sports events organizers expressed their concern about legitimacy of using live streaming application to broadcast sports events.

The aim of this Master Thesis is to examine existing legal ways of copyright protection of sport events, to identify weak points of copyright protection over live streaming of sport broadcasting and to make suggestions for more effective legal protection.

In order to achieve this aim, the first chapter of the research analysis acquis communautaire concept of copyright and identifies basic frames of the EU originality standard. It is found that sports events as such do not protect by copyright due to the lack of "author's own intellectual creation" as the main requirement for the EU copyright protection. Furthermore, it is underlined that sports events do not meet criteria for protection by "traditional" related rights throughout all EU Member States. The first chapter also discusses the exclusive right of several Member States for the protection of sports events known as "house right" which is based on property rights and contractual obligations.

The second chapter of the Master Thesis is focused on audiovisual recordings of sports events. It is stated that audiovisual recordings could be protected by copyright law when they meet the EU originality standard, however it is emphasized that the requirements for the granting copyright protection over audiovisual recordings of sports events are not clear and generate legal uncertainty. The EU neighbourigng right of the film producer's right to the first fixation of a film and broadcasting organization of fixation of their broadcast is also discussed in this chapter.

The third part starts with explanation of operational side of live streaming technology фтв identification of all parts involving in providing live streaming transmission. Further, the latest available data of illegal live streaming of sports events indicates that illegal live streaming of sports events caused economic harm both to the professional sports leagues and organizers and to the minor sports which try to reach niche audience. The possible ways of tackling the live streaming from the dedicative venues are discovered and outlined different approaches for protection of sports organizers rights by sui generis rights, copyright and neighboring rights. The

last chapter also evaluates legality of the actions of all parties involved in operational system of illegal live streaming and tries to find the most suitable enforcement measures against them.

The author concludes that sports events organizers need a new neighbouring right over their events in order to tackle illegal live streaming of sports events from dedicated venues. In order to remove illegal streaming, the enforcement procedure against intermediaries, through notice-and-take-down system, is found as the most appropriate legal tool. From this point author recommends to introduce new EU neighbouring right for the sports organizers and to adopt new EU horizontal legislation for notice-and-take-down system which would better address the needs in reducing illegal content online.

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HONESTY DECLARATION

16/05/2019

Vilnius

I, Vladyslav Holubokov, student of
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Mykolas Romeris University (hereinafter referred to University),
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(Faculty /Institute, Programme title)

confirm that the Bachelor / Master thesis titled

"Copyright and sport broadcasting: new challenges in the era of live streaming" :

1. Is carried out independently and honestly;
2. Was not presented and defended in another educational institution in Lithuania or abroad;
3. Was written in respect of the academic integrity and after becoming acquainted with methodological guidelines for thesis preparation.

I am informed of the fact that student can be expelled from the University for the breach of the fair competition principle, plagiarism, corresponding to the breach of the academic ethics.

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