Recommendation on combating online piracy of sports and other live event

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On 4 May 2023, the European Commission published a notable Recommendation on combating online piracy of sports and other live events. The Recommendation encourages member states, national authorities, rightsholders and providers of intermediary services to take effective, balanced and appropriate measures to combat unauthorised retransmissions of live events. The Commission emphasises that sports and live events contribute to “fostering a diverse European cultural scene”, bringing citizens together and providing a sense of community; and unauthorised streaming can cause “significant loss in revenue" for performers, live and sports event organisers and broadcasters. Notably, the Commission states that the Recommendation builds upon the Digital Services Act (DSA), which “streamlines the processing of notices sent to providers of hosting services" in case of illegal content.

The 16-page Recommendation is centred around three main issues. The first is about ensuring the “prompt treatment” of notices related to unauthorised retransmissions of live sports events. In this regard, the Recommendation states that providers of hosting services, other than online platforms, are encouraged to cooperate with rightsholders, in particular by (a) effectively engaging with trusted flaggers for the purposes of this Recommendation; and (b) developing and using technical solutions aimed at facilitating the processing of notices, such as application programming interfaces. The Recommendation notes that the DSA already imposes obligations on online platforms to take the necessary technical and organisational measures to ensure that notices submitted by trusted flaggers are given priority and are processed and decided upon without undue delay.

The second issue is about cooperation between rightsholders and providers of intermediary services. The Recommendation states that providers of intermediary services, particularly those which are able to “identify and locate the source” of unauthorised retransmissions of live sports events, are encouraged to (a) cooperate, including with providers of hosting services and holders of rights in the live transmission of sports events, to facilitate the “identification of the source” of unauthorised retransmissions; and (b) put in place “specific measures against repeated misuse of their services”.

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The third significant issue is in relation to injunctions. Importantly, the Recommendation provides that member states are "encouraged to assess whether, in their jurisdiction, sports event organisers are entitled to take legal action to prevent, or to prohibit the unauthorised retransmission of a live sports event". And where this is not the case, member states are encouraged to grant legal standing to sports event organisers to seek an injunction in order to prevent imminent unauthorised retransmission of live events. Further, member states are encouraged to provide for injunctions against operators of unauthorised retransmissions of live sports events, as well as against providers of intermediary services whose services are misused by a third party for unauthorised retransmissions of live sports events, "regardless of the intermediary's lack of liability", in order to terminate or prevent such unauthorised retransmission of live sports events. Crucially, in relation to "dynamic injunctions", member states are encouraged to provide for the possibility to seek injunctions imposed on a given intermediary service provider, that can be "extended" to enable the blocking of pirate services which carry out unauthorised retransmissions of live sports event "even if they were unidentified at the time of the application for an injunction, but where they concern the same sports event, in line with their national procedural rules".

Finally, the Commission stated that it will assess the effects of the Recommendation on unauthorised retransmissions of live events by 17 November 2025. This is also the deadline for the Commission to evaluate how the DSA interacts with other legal acts, including copyright legislation. The Commission will then decide whether additional measures are needed at EU level.

Commission Recommendation on combatting online piracy and other live events, C(2023) 2853 final, 4 May 2023

https://digital-strategy.ec.europa.eu/en/library/recommendation-combating-online-piracy-sports-and-other-live-events

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