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CSLR

CENTRE FOR SPORTS LAW RESEARCH

EU Sports Law and Policy

Summer School

1st September 2019

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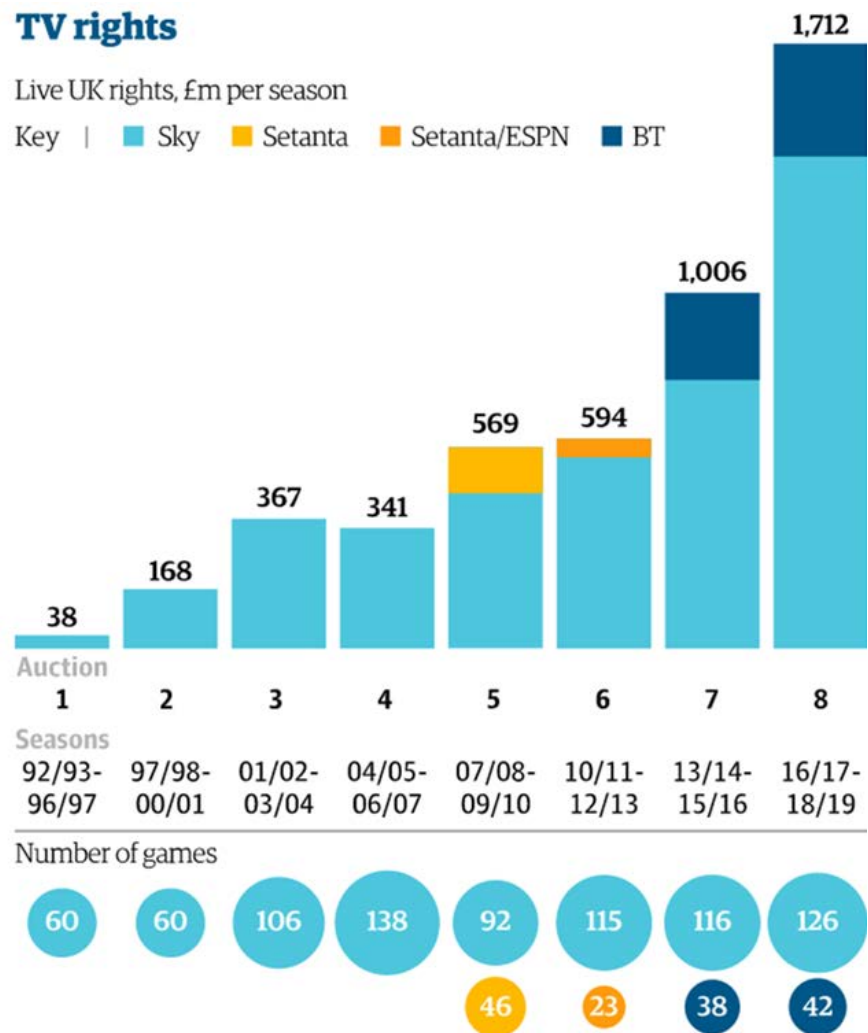
SPORTS MEDIA RIGHTS & EU LAW

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TV rights

Live UK rights, £m per season

Key | Sky Setanta Setanta/ESPN BT



Broadcasting and Media Rights

- No stand-alone broadcasting rights in a sporting event
- Need to protect the investment and value in sports with other legal mechanisms:
- Property rights to the venue
- Contractual obligations with exclusive rights for use of facilities and supplies
- authority to use IP rights



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Collective Selling of Media Rights

- **Article 101 TFEU:** prohibits Agreements between undertakings that have object/effect of restricting competition on the market
- **Article 101(3) TFEU:** agreements may be exempted if (1) contribute to improving the production or distribution of goods; (2) restriction is proportionate; (3) restriction does not eliminate competition; (4) consumers receive a fair share of the benefit

Champions League

- ⚽ UEFA sold its free-to-air and Pay TV rights on an exclusive basis, to one single broadcaster per territory, in a multi-year deal.
- ⚽ [2003 European Commission Approval and UEFA Commitments](#)
- ⚽ Competitive Bidding for the rights
- ⚽ Limitation of Exclusivity to a 3 year period
- ⚽ Subdivision of Rights into Packages



English Premier League

- 2006 European Commission Approval and FAPL Commitments
- Competitive Bidding for the rights
- Limitation of Exclusivity to a 3 year period
- Subdivision of Rights into Packages
- **Stand-alone unconditional bids**
- **No single-buyer rule**



National Competition Authorities

- OFCOM (UK): any remedy which prevents or restricts aggregation to the extent that would be necessary to eliminate market power is also likely to risk sacrificing some of these benefits, [...] it might result in **reduced convenience for some consumers.**



- Bundeskartellamt (Germany): the arrangement exempted by the EU Commission was **not beneficial enough for the consumers.**

Current UEFA Selling Model

- ⚽ UEFA sells the rights on a platform neutral basis. Successful bidders will be awarded exclusive rights on all the platforms.
- ⚽ BT Deal 2016 -2019 - BT has successfully acquired all the packages of Champions League Media Rights available for the British market.
- ⚽ Yes subdivision in packages
- ⚽ No “No single-buyer rule “



TV Rights, Competition Law and Free Movement of Services

- *Murphy v MPS Ltd* [2007] and *FAPL Ltd v QC Leisure* [2008]
Prosecutions for breach of copyright and unauthorised decoders
- Defence based on Art.56 TFEU freedom to provide services and Art.101 TFEU anti competitive practices
- Clauses of exclusive licence agreement were restricting competition under Art.101 TFEU
- These restrictions could not be objectively justified



Post Murphy

- No English language commentary for matches broadcast abroad
- Limit on the number of Live matches broadcast abroad (not in force anymore)
- Commission Investigation on cross-border provision of pay-TV services (Commitments made binding on Paramount in July 2016)
- Investigation is focused on passive – unsolicited sale



Over-The-Top

- Shift from traditional broadcasting to online transmission
- OTT: subscription-based video on demand services that offer access to film and television content
- OTT allow direct access to consumer (no intermediaries) - Ideal for non-premium products and flexible subscriptions



Copyright in the EU

- No harmonised rules on Copyright in the EU, but:
- **Exhaustion of rights** of distribution (InfoSoc Directive) and
- **country of origin principle** on right of communication to the public
- Enforcement Directive – MS must apply effective, dissuasive and proportionate remedies and penalties against those engaged in counterfeiting and piracy



Copyright in the EU

- Portability of online content services (COM 2015 627) – to enable users to access online content services legally purchased in their home MS whilst temporarily in another MS
- New **EU Directive on Copyright in Digital Single Market:**
- Article 15: right of reproduction for publishers of press publications (“link tax”);
- Article 17: online content sharing service provider is communicating to the public even when work is uploaded by its users (“meme tax”)



Copyright, Illegal Streaming and Blocking Injunctions

- Unauthorised file sharing has a significant impact on the market
- No liability if illegality is not known
- **Infosoc Directive** – Art8(3) – MS shall ensure that rightholders are in a position to apply for an injunction against *intermediaries* whose services are used by a third party to infringe a copyright or related right.
- **Electronic Commerce Directive** – Art 15 – no general obligation to monitor, therefore ISP must have knowledge



Blocking Injunctions and right of the parties

- C-314/12, *UPC Telekabel v. Constantin Film* [2014] para. 32
- [...] ISP which allows its customers to access protected subject-matter made available to the public by a third party is an ***intermediary*** whose services are used to infringe a copyright.
- *Union Des Associations Européennes De Football (UEFA) v British Telecommunications plc* [2017] EWHC 3414 (Ch)
- Injunction requiring the six major ISP to block access to streaming **servers** – rather than websites



Protected Events

- **Audio Visual Media Services Directive 2010/13/EU**
- **A major event should not be broadcast in such a way that a ‘substantial proportion of the public’ could be deprived of the possibility of following the event on free-to-air television**
- **The MS may draw up a list with designated events, national or non national. MS have to notify this list of events to other MS**
- **Free to air transmission v. restriction of market freedom**

Protected Events

- It has general resonance in MS;
- the event is generally recognised for its distinct cultural importance for the MS population, especially as a catalyst of cultural identity;
- the event is a competition of international importance and a national team is involved;
- the event has been traditionally broadcast on free television and has commanded large audiences

Protected Events in the UK

- Regulated by Part IV Broadcasting Act 1996
- Group A (full live coverage protected) or Group B events (secondary coverage protected)
- *FIFA and UEFA v Commission T-385/07.*
- Commission and CJEU: finals are single events and can be protected in their entirety
- Commercial rights can be restricted against the right of information of the public

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