

Italian regulation of high value sports content under the EU's AVMS Directive

09 DECEMBER 2019

Paolo Macchi
SENIOR ASSOCIATE | IT

CATEGORY:
ARTICLE



The Audiovisual Media Services (AVMS) Directive was created in 2010 to coordinate national legislation on all audiovisual media, both traditional TV broadcasts and on-demand services, across the EU. Last revised in 2018, the AVMS Directive is one of the greatest achievements of European harmonization.

Two important articles of the AVMS Directive regulate exclusive rights and short news reports in television broadcasting. Articles 14 and 15 set out rules on “events of major importance for society” (14) and “events of high interest to the public” (15), aiming to prevent pay-TV broadcasters or other private audiovisual service providers from exploiting their broadcasting rights to limit people’s access to events and information.

The important question is how “major events” and “events of high interest” are defined. Under Article 14, EU Member States are required to draw up a list of events which, in accordance with their culture and traditions, are considered to be important for their society (the so-called “listed events”). In doing so, each Member State must also notify the European Commission of the measures they are taking to allow access to these events, and how they are implementing them. Perhaps because of this freedom to define major events according to cultural standards, there is no objective definition of them. By way of examples, the AVMS Directive cites “the Olympic Games, the football World Cup and the European football championship”.

In contrast, Article 15’s definition of “events of high interest” sets a lower threshold, requiring all Member States to ensure that rights-holding broadcasters provide “short extracts” of events of high interest to the public to competitors. This allows EU-wide broadcasts of the clips by any channel, including dedicated sports channels, limiting those edits to 90 seconds and solely for general news purposes.

The AVMS Directive also states that the extracts may be used in on-demand audiovisual services, provided that the relevant program is offered to the public on a deferred basis by the same broadcaster or media service provider. In addition, non-rights-holding broadcasters are allowed access to the venue where the relevant event is being held. Each Member State’s local authority is required to set forth guidelines on how broadcasters should compensate each other for accessing the short extracts, the maximum lengths of such short extracts and the time limits to their transmission.

Application in Italy

In Italy, the entity responsible for drafting the list of “major events” is the Authority for Communications Guarantees (“Autorità per le Garanzie nelle Comunicazioni,” or simply “AGCOM”), which operates as a regulator and competition authority for the local communication industries. This list, last updated in 2012 (*see Delibera 131/12/CONS*), includes, in addition to those mentioned above, high profile sports events such as all official football matches played by the Italian national team, the “Giro d’Italia” bicycle race, and the Italian Formula 1 Grand Prix. The implementation of Article 15’s short news reporting is also regulated in Italy by AGCOM (*see Delibera 667/10/CONS, as amended by Delibera 392/12/CONS*), which provides a list of events of high interest to the public spanning from the Olympics Games to various national and international football matches and a variety of other internationally-renowned sports events.

It is thus clear that, by enacting Articles 14 and 15 of the AVMS Directive, the European legislator intends that free-to-air television does not completely lose its status as the primary vehicle for communications to the public over emerging pay-TV, while also avoiding any threat to the public’s right to information.

Withers’ growing global sports and IP teams are constantly monitoring the intersection between sports and media. With offices located in key jurisdictions worldwide, Withers regularly advises corporate clients, including sports leagues, football clubs, sports marketing agencies and other holders of sports-related media rights on a range of sports and commercial matters.

Authors

Paolo Macchi

SENIOR ASSOCIATE | MILAN

Corporate

 +39 02 8821 4211

 paolo.macchi@withersworldwide.com