

A STUDY ON THE POTENTIAL IMPACT OF THE DIGITAL SINGLE MARKET ON THE SPORTS AUDIOVISUAL ECOSYSTEM IN EUROPE

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0 Executive summary

0.1 Context

The Single Market is a core political objective of the European Union (EU) Treaties, which the European Commission (EC) has a remit to enforce. Over the years, the EC has taken a number of steps aimed at establishing the Single Market, including a number of legislative initiatives such as the Services Directive (2006/123). Until now, the audiovisual sector, including sports content, has been treated as an exception and excluded from the scope of the Services Directive. This has been justified on the basis of the existence of national sector policy, and the inherently national (culture- or language-specific) appeal of audiovisual content.

The Digital Single Market (DSM) is the EC's latest political initiative, whose objective is to create a single market for digital content and services. The EC aims to address a set of so-called "key obstacles" to the functioning of the DSM, through measures which include permitting portability of legally acquired content and wider online access to content by users across the EU.

It is within this context that the Sports Rights Owners Coalition (SROC) asked Analysys Mason to assess the potential impacts that the various initiatives involving sports audiovisual online content suggested as part of the EC's DSM agenda would have on consumers, sports rights owners and broadcasters/distributors. The impacts assessed in this report concern the creation and distribution of *sports* audiovisual content (with a focus on *premium*¹ live sports content), as well as ease of access to *sports* audiovisual content by consumers both domestically and across EU borders. Specifically, this report goes beyond the analysis of EU cross-border access to audiovisual services. It should be noted that this report gives only very limited consideration to the impact that the DSM would have on other types of content services, and mainly in the context of discussing the potential impact on sports content services.

0.2 The EC's DSM proposals and our scenarios

We have used the EC's initial proposals as the basis for our assessment. We identified five key scenarios, or mechanisms, that the EC could use to implement the objectives of the DSM agenda, namely:

- Making the **portability** of online content services mandatory
- Four scenarios for cross-border access
 - cross-border access 1 – implementing **compulsory pan-EU licences** for online content rights
 - cross-border access 2 – **banning geo-blocking** of online content services
 - cross-border access 3 – permitting **passive sales** of online content services
 - cross-border access 4 – **extending the 'country of origin'** principle to the Internet.

¹ In a broad sense, not only limited to annual football competitions.

0.3 Study approach

Our approach to the study has been to make a comparative assessment of the potential impacts of each of the five scenarios, based on evidence and literature, and responses provided to us by SROC members.² The study is based on:

- **Detailed review of existing literature:** identification and review of over 50 relevant documents (proposals, consultations, responses, independent reports, articles, etc.) related to the EC’s DSM proposals (both from the EC itself and from a number of stakeholders, including sports rights owners, broadcasters and distributors, professional advisors, etc.). The complete list of documents reviewed is available in Annex B
- **Answers from SROC members to our questionnaire:** sports rights owners are essential stakeholders in the value chain as their strategies and contracts determine the way that other players in the value chain optimise their services and strategies for sports audiovisual content. We therefore prepared a questionnaire for SROC members, so that we could understand their sports audiovisual content services, their views on the EC’s DSM proposal, and the course of action they could potentially take. Replies to this questionnaire form an important element of our assessment of each scenario
- **Theoretical research and assessments:** for each scenario we have described the current situation, the proposed changes, the potential positive and negative impacts (i.e. the pros and cons) for each main type of stakeholder (consumers, broadcaster/distributors and sports rights owners), based on our own assessment. The detailed assessment is set out in Annex A.

0.4 Other considerations

The comparative assessment of DSM scenarios was not undertaken in isolation, but in the context of an existing strong and successful ecosystem that includes a diverse range of services for sport audiovisual content

As well as looking at the potential benefits of the five scenarios in isolation, our comparative assessment also took into account the benefits that sports audiovisual content currently provides to a significant number of EU consumers and citizens. In this context, we also assessed the risks that each scenario might pose to: (i) the current sports audiovisual services used by EU consumers and citizens and (ii) the key stakeholders which underpin these services (right owners and broadcasters/distributors).

As the EC stated in 2011, “sport represents a large and fast-growing sector of the economy and makes an important contribution to growth and jobs, with value added and employment effects

² Detailed modelling of the economic impact of the potential changes was **not** included in the scope of this project.

exceeding average growth rate”.³ This contribution is achieved through a “virtuous circle”, involving (i) strong and diverse consumer demand for different types of sports audiovisual services across EU territories, (ii) a vibrant EU audiovisual industry that responds to this consumer demand with highly personalised and innovative services (typically by territory), and (iii) leading sports rights owners that invest in the attractiveness of sports competitions and the underlying talent (players, coaches, etc.) in Europe and beyond (e.g. adjusting schedules to appeal to global audiences).

We note that a large majority of EU consumers are satisfied with the sports content services they can already access (e.g. when surveyed, 93% of users looking to access sports content on the Internet in their country stated that they were able to find what they were looking for⁴). We also understand that audiovisual rights represent the most important source of income for top sporting events organisers, accounting for over 40% of income (and as much as 90% in certain cases).⁵ This income is very important to the European sports ecosystem, as it supports this “virtuous circle” by enabling reinvestment in young talent, improvements to sports infrastructure for participants at all levels, and delivery of high-quality sports events and relevant tailored audiovisual content services in response to demand from fans in each EU Member State.

The strong and diverse consumer demand for sports content services is the result of social, cultural, political and economic factors, and is inherently territorial

A varied range of factors, including the specific sports content and price, combine to determine the attractiveness of an sports audiovisual service to a certain audience, and thus its value to broadcasters/distributors and sports rights owners. This means that there is no single, standardised optimal strategy for developing and commercialising an audiovisual content service for a sport to maximise its value for consumers, rights owners and broadcasters/distributors at a pan-EU level. The EU is made up of 28 countries, with 24 official languages, and a number of other co-official (e.g. Welsh, Catalan) and non-European (Urdu, Turkish) languages spoken by its citizens. There are more than 10 000 TV channels, and no single sports broadcaster has been able to operate successfully across the EU without creating multiple versions of its stream for different audiences (e.g. Eurosport). This is because the demand for, and value of, sports audiovisual content differs by genre and audience, with territorial exclusivity the mechanism by which these differences can be framed, and hence how audiovisual content services are tailored to specific audiences and valued by the key stakeholders. Moreover, in territories where demand for a particular sport is still

³ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, European Commission, 2011 COM(2011) 12 final – Developing the European Dimension in Sport.

⁴ *Flash Eurobarometer survey 411*, conducted by TNS Opinion at the request of the European Commission, published August 2015.

⁵ For example, broadcast revenue accounted for 54% of the English Premier League clubs' revenue in 2013/14 (see *Annual Review of Football Finance*, Deloitte, 2015; available at <http://www2.deloitte.com/uk/en/pages/sports-business-group/articles/annual-review-of-football-finance.html>), and broadcast revenue accounted for 59% of total revenue for Italian clubs in 2012/13 (see <http://www.bbc.co.uk/news/business-27667472>). Also the Union of European Football Associations (UEFA) derives around 70% of its revenue from the sale of media rights to its events (see http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf). We note, however, that these percentages vary significantly between sports leagues and within sports leagues.

limited (e.g. cricket, outside the UK), sports organisations typically make non-personalised services available, in the expectation that this could generate demand in future. If demand does materialise and grow, this creates an opportunity to develop a new personalised service. As a study by RBB Economics and Value Partners concluded, “The use of exclusivity in content rights deals is an accepted practice in the [audiovisual] industry because it delivers benefits for the purchaser [broadcaster/distributor], the seller [sports rights owner] and consumers”.⁶

0.5 Conclusions

Based on a detailed review of the literature, answers from SROC members to our questionnaire and our own theoretical assessments, we conclude that portability of sports audiovisual content services would have a far less negative impact on all stakeholders at every level of the value chain than any of the four types of cross-border access.

Our assessment provides evidence of the disproportionate risks and potential unintended consequences of implementing one or more of the *cross-border* scenarios for DSM; both threats to the quality and diversity of premium sports audiovisual content services available to EU consumers and threats to the sport industry ecosystem as a whole. In contrast, this study has shown that implementation of a *portability* scenario for DSM could meet the EC’s main objectives whilst minimising these risks. However, some risks are inherent in the portability scenario, and every effort would need to be made to mitigate these, such as putting robust and homogenous authentication and verification systems in place before enabling the portability of audiovisual services featuring sports content.

If portability was not properly implemented (or worse, if cross-border access was favoured), there would be a negative effect on the virtuous circle associated with sports content, leading to a reduced variety of sports content and higher service prices for consumers, reduced diversity of broadcasters/distributors offering these services and less investment to keep sports content attractive. This appears to be a high-risk option, given the relatively low⁷ demand for portability or cross-border access for online sports content services (only around 2% of Internet users in the EU have tried to access sports content through an online service tailored for another EU Member State, and only between 0.01% and 2.7% of EU citizens might be willing to pay for online sports content).⁸

Figure 0.1 below provides an overview of the current situation, potential changes that have been proposed, and our impact assessment for each of the five DSM scenarios.

⁶ *The benefits of territorial exclusivity in the European audiovisual industry*, RBB Economics and Value Partners, February 2009; see http://www.valuepartners.com/downloads/PDF_Comunicati/Media%20e%20Eventi/2009/Value-Partners_RBBEconomics_report.pdf.

⁷ When surveyed, 93% of users looking to access sports content on the Internet in their country stated that they were able to find what they were looking for.

⁸ *Flash Eurobarometer survey 411*.

Figure 0.1: Summary conclusions on impact of portability and cross-border access [Source: Analysys Mason, 2016]

Scenarios		Current situation	Potential changes	Impact assessment
Portability of online content services		Some sports audiovisual services acquired legally in the country of residence cannot be accessed online in another EU country	Would enable consumers to access legally acquired sports audiovisual services online across the EU while travelling for a limited period of time. Mandatory portability for pay TV, whilst portability of FTA services would be available on a voluntary basis (via “opt-in”). Would require some form of authentication and residence verification	Portability would meet the demand from a relatively small number of consumers. ⁹ Strong uncertainties exist about how to implement portability (especially for FTA services), but the opt-in mechanism for these services would partially address this concern. Academic studies have also suggested that without a solid verification system, there is a risk of an abuse of portability (i.e. development of a grey market), due to price differences between territories. Most sports rights owners have made no provision for portability of online content services and would have to review and renegotiate their contracts with broadcasters/distributors.
Cross-border access	1: Implementing compulsory pan-EU licences for online content rights	Sports rights owners have the right to grant licences for single or multiple territories	Would prevent sports rights owners from licensing online rights for territories smaller than the whole EU	The current licensing and rights market would collapse, with more-limited availability of market exclusivity for broadcasters and thus less incentive/ability to personalise content. Sports rights owners would have less contractual freedom and would see a reduction in their income, which could have a negative impact on the quality of sports events. Consumers would see a reduction in the personalisation of content, a more-limited choice of broadcasters/distributors offering coverage and potentially higher prices. Most broadcasters would not be able to afford rights at the EU level. Smaller broadcasters/ distributors and FTA broadcasters (the majority of broadcasters in the EU, in terms of numbers) would be much less able to compete with the largest players. There is very limited demonstrable demand from consumers for cross-border access to sport content (and even less willingness to pay).
	2: Banning geo-blocking of online content services	Delivery of sports audiovisual services over the Internet is very often subject to a check on the consumer’s location	Would remove the ability to personalise online sports audiovisual content or to restrict access to that service to the licensed territory.	In theory, consumers would benefit from greater online access to sports audiovisual content from other territories. In reality, however, major sports rights owners would be forced to offer fewer audiovisual content services (and in some cases might only be able to offer one pan-EU licence), or refrain from granting licences for online transmission at all in some Member States. Without geo-blocking, sports rights owners would lose the ability to make available coverage (whether free or paid) directly to consumers in territories where media rights have not been licensed due to limited (or no) demand, without materially and fundamentally affecting the value of rights that have been licensed. The lack of exclusivity would make it harder for broadcasters/distributors to make the necessary return on their investment in sports content, thus reducing the incentive for them to acquire rights in the first place and/or the incentive to produce tailored content for their viewers. Eventually, this would also indirectly cause the territorial licensing system to collapse. There is very limited demonstrable demand from consumers for cross-border access to sport content (and even less willingness to pay).

⁹ 2% of European viewers are interested in cross-border access to Europe-wide sports content according to Answers to Q13, *Flash Eurobarometer survey 411*.

Scenarios	Current situation	Potential changes	Impact assessment	
<p>Cross-border access</p>	<p>3: Permitting passive sales of online content services</p>	<p>Licensed programmes should not be marketed outside the licensed territory, and the broadcaster/distributor should implement a solution to ensure that licensed programmes cannot be viewed outside the licensed territory</p>	<p>Would allow a consumer in one EU Member State to purchase any online sports audiovisual service which was available in any other Member State, if the broadcaster/distributor was willing to accept that unsolicited request</p>	<p>In theory, active consumers might benefit from opportunities for price arbitrage between Member States. However, to avoid jeopardising the value of their media rights, sports rights owners would be likely to license less (if any) online sports audiovisual content, due to the risk that online passive sales (which have lower barriers to access than satellite transmission and are subject to viral marketing on the Internet) could effectively turn into cross-border access. In practice there seems to be no clear distinction between “passive” and “active” sales of access to online sports content services, and so there is a high risk that permitting “passive” sales would also permit “active” sales. As already identified, cross-border access brings reduced exclusivity and restricts the ability of broadcasters/distributors to make the necessary return on their investment in sports content, thus reducing the incentive for them to acquire rights in the first place and/or to invest in producing tailored content for their viewers.</p> <p>Reduced availability of rights by sports owners might make it more difficult for small broadcasters/distributors to acquire attractive sport content (particularly for low-value territories), because of the commercial impact on the more valuable markets. Eventually, this would indirectly cause the territorial licensing system to collapse.</p> <p>There is very limited demonstrable demand from consumers for cross-border access to sport content (and even less willingness to pay).</p>
	<p>4: Extending the ‘country of origin’ principle to the Internet</p>	<p>Sports rights for individual territories must be acquired separately, through specific negotiation</p>	<p>Would allow certain rights to be cleared collectively in the country of origin. However, to avoid an undue negative impact and disruption, sports rights owners could rely on their “contractual freedom” to determine how their intellectual property was to be negotiated (for instance, opting out of the collective negotiations)</p>	<p>It is theoretically possible that a wider choice of general media services could develop. However, if contractual freedom was maintained and sports rights owners contracted out of the collective arrangement, in practice there would be no real changes to the availability of online sports content services.</p> <p>If contractual freedom was not properly safeguarded, SROC members have indicated that they might have to restrict the sale of rights for exploitation on online platforms throughout Europe. If contractual freedom was removed the current licensing and rights market would collapse, and sports rights owners would be likely to license less (if any) online sports audiovisual content. This would have negative impacts for consumers, rights owners and broadcasters/ distributors, similar to those under the other cross-border access scenarios.</p>

1 Introduction

1.1 Background

The Single Market is a core political objective of the European Union (EU) Treaties, which the European Commission (EC) has a remit to enforce. Over the years, the EC has taken a number of steps aimed at establishing the Single Market in services, including a number of legislative initiatives such as the Services Directive (2006/123), adopted in 2006. The EC has also acted to strengthen the Single Market through its role as ‘guardian of the Treaties’, ensuring that EU rules (particularly those relating to competition and free movement in the internal market) are applied properly.

Until now, the audiovisual sector, including sports content, has been treated as an exception and excluded from the scope of the Services Directive. This has been justified due to the existence of national audiovisual sector laws and policies, and the inherently national (culture- or language-specific) appeal of audiovisual content. Another relevant justification is the high level of consumer demand for personalisation of audiovisual services, which reflect the diversity of cultures and languages across the EU, as well as services which meet general national interest (e.g. national production and listed events).

Given its ambition to foster the Single Market, the EC has previously considered possible ways to weaken or eliminate these exceptions for the audiovisual sector, through initiatives that have included: a number of consultations; attempts to extend harmonisation measures applied to other cultural industries to audiovisual rights; and regulatory intervention.

The Digital Single Market (DSM) is the EC’s latest political initiative with this objective in mind. Following publication of the EC’s strategy for a DSM on 6 May 2015,¹⁰ several stakeholders initiated debate on the intended and unintended consequences of the EC strategy, especially in relation to the issues of *portability* and *cross-border access* to content.

As part of this strategy, the EC puts forward a range of initiatives with the objective of creating a single market for digital content and services. It aims to address a set of so-called “key obstacles” to the functioning of the DSM, through measures which would lead to portability of lawfully acquired services and facilitate wider online access to content by users across the EU. In its report,¹¹ which assesses the impact of the initiative to enhance the cross-border portability of online content services in the DSM, the EC emphasises the fact that cross-border portability removes “the barriers that currently stop consumers, when travelling in the EU, from accessing services they subscribed to or digital content they have purchased or rented in their home Member State”. Furthermore, in its Communication on a Digital Single Market Strategy for Europe, the EC

¹⁰ COM(2015) 192 final.

¹¹ Impact Assessment accompanying the document “Proposal for a Regulation of the European Parliament and of the Council to ensure the cross-border portability of online content services in the internal market”, European Commission, December 2015

states that it “is assessing options and will consider legislative proposals for adoption in spring 2016 aiming” for instance at “enhancing cross-border distribution of television and radio programmes online via the possible extension of some of the provisions of the Satellite and Cable Directive to broadcasters’ online transmissions”.

1.2 Objective and methodology

In this context, the Sports Rights Owners Coalition (SROC) commissioned Analysys Mason to assess the potential impacts that portability and cross-border access would have on consumers’ access to sports content (and specifically premium sport content), and the creation and distribution of sports audiovisual content by sports rights owners and broadcasters/distributors. The basis for our assessment is the EC’s initial proposals. We have identified five key hypothetical but plausible scenarios for implementation of the DSM political initiative that would lead to two distinct, broad outcomes: portability and cross-border access:

- Making the **portability** of online content services mandatory
- Four scenarios for cross-border access
 - cross-border access 1 – implementing **compulsory pan-EU licences** for online content rights
 - cross-border access 2 – **banning geo-blocking** of online content services
 - cross-border access 3 – permitting **passive sales** of online content services
 - cross-border access 4 – **extending the ‘country of origin’** principle to the Internet.

The objective of this study has been to make a comparative assessment of the potential impact of each of the five scenarios, based on evidence and literature, and responses provided by SROC members as part of the study. Detailed modelling of the economic impact of the potential changes is outside the scope of this study. It should be noted that this report does not consider the impact that the DSM would have on other types of content.

The main body of this report provides a high-level impact assessment of the five individual scenarios and a comparison of all five scenarios. Our approach has been to use theoretical or factual evidence to qualify and quantify the pros and cons of each scenario for the various stakeholders. Given the hypothetical nature of four of the five scenarios (since the EC has not yet clearly defined its approach to implementation of cross-border access), we also comment on the uncertainties associated with each scenario. These uncertainties will require careful assessment when specific implementation of each scenario and the details are discussed or negotiated with the EC, Member States and other stakeholders. A more-detailed summary of the research and analysis carried out for each of the five DSM implementation scenarios is provided in Annex A, which forms the basis of our assessment and conclusions.

Specifically, this study is based on:

- **Detailed review of existing literature:** identification and review of over 50 relevant documents (proposals, consultations, responses, independent reports, articles, etc.) related to

the EC's DSM proposals (from the EC itself and from a number of stakeholders, including sports rights owners, broadcasters and distributors, professional advisors, etc.). The complete list of documents reviewed is available in Annex B.

- **Answers from SROC members to our questionnaire:** sports rights owners are essential stakeholders in the value chain, as their strategies and contracts determine the way that other players in the value chain optimise their services and strategies for sports audiovisual content. We therefore prepared a questionnaire for SROC members, so that we could understand their sports audiovisual content services, their views on the EC's DSM proposals, and the course of action they could potentially take. Replies to this questionnaire form an important element of our assessment of each scenario.
- **Theoretical research and assessments:** for each scenario we have described the current situation, the proposed changes, the potential positive and negative impacts (i.e. the pros and cons) for each main type of stakeholder (consumers, broadcaster/distributors and sports rights owners), based on our own assessment. The detailed assessment is set out in Annex A.

For the purposes of analysis, we have assessed the pros, cons and uncertainties¹² for individual stakeholder groups. As all of these stakeholders are part of the same value chain and do not operate in isolation, the decision and actions of one type of stakeholder would have an impact on the others; however, we have not always taken account of these knock-on effects in our analysis.

Each description of a potential implementation scenario in Sections 3 and 4 concludes with an overall assessment. We have used a colour-coded arrow system to provide a visual representation of our assessment and conclusions on the impact that each scenario would have on each stakeholder: green denotes positive, orange neutral and red negative.

It is important to note that at the time of writing this report, the EC had only issued a proposal for a Regulation on portability; no concrete information was available regarding how the EC plans to facilitate cross-border access. Each of the scenarios we have analysed is to a greater or lesser extent hypothetical, and a high degree of uncertainty surrounds its implementation, impact and outcome. In the interests of producing a useful document, we have attempted to draw conclusions from our analysis which point to a particular impact (positive, negative or neutral), which required us to take a stance regarding some of the uncertainties (towards what we assume would be the most probable scenario). Therefore it is important to note that some of our conclusions could require revision if the scenario definitions were to be altered.

¹² Pros and cons include benefits and costs; and by cost we also mean a potential reduction in existing benefits.

1.3 Structure

This report is laid out as follows:

- Section 2 provides an overview of sports audiovisual content and the importance of territorial exclusivity
- Section 3 contains analysis of the impact of the portability proposal
- Section 4 contains analysis of the impact of the initiatives to implement cross-border access
- Section 5 sets out the conclusions from our analysis.

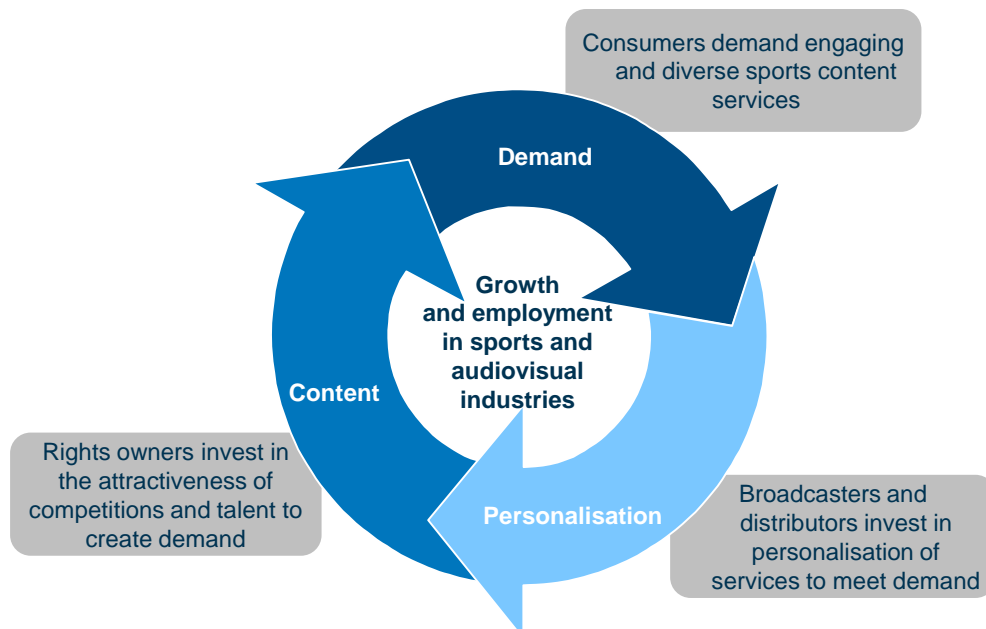
Annex A contains a broader set of impacts and more-detailed analysis of the evidence we have gathered on the pros, cons and uncertainties of the five scenarios. The bibliography in Annex B provides a reference to the documents read and analysed as part of this study.

2 The importance of territorial exclusivity to audiovisual sport content services

Sport plays an important role within the social, political and economic fabric of Europe. As the EC stated in 2011, “sport represents a large and fast-growing sector of the economy and makes an important contribution to growth and jobs, with value added and employment effects *exceeding average growth rate*”.¹³ 2% of global GDP is generated by the sport sector.¹³ Sport has been cited as a contributor to the Europe 2020 strategy, and is seen as a major driver of tourism in the European region.¹³ European sports audiovisual content has significant global appeal and represents one of the single market’s most successful audiovisual products, similar to the role that Hollywood’s film and TV exports play in the USA. For example, the Premier League now earns more from selling its audiovisual content outside the EU than from sales to EU Member States (other than the UK).¹⁴

This contribution is achieved through a “virtuous circle” of strong consumer demand and willingness to pay for sports content services, investment by broadcasters and distributors to personalise these services according to demand, and investment by sports rights owners in the overall attractiveness of sports competitions and talent. This virtuous circle is shown in Figure 2.1 and discussed below.

Figure 2.1: Virtuous circle for sports content services [Source: Analysys Mason, 2016]



¹³ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, European Commission, 2011 COM(2011) 12 final – Developing the European Dimension in Sport.

¹⁴ Note: excludes domestic markets; Source: *Revealed: Asia driving boom as Premier League foreign TV cash hits £2.23bn*, Sporting Intelligence, 16 September 2013 and *Premier League set for GBP3 billion windfall*, Daily Mail, 8 October 2015.

There is strong and diverse demand from consumers for different types of sports audiovisual services across EU territories

The attractiveness of audiovisual sport content varies significantly depending on the country and region, reflecting the local sporting culture, history and the success of particular teams and individuals. The current state of the market for audiovisual sport content reflects these differences in culture and demand. Some sports events, such as the UEFA European Football Championship, have mass appeal for audiences in the majority of Member States. In contrast, other sports, such as cricket, have a mass-market audience in only a few countries, and niche audiences elsewhere. Competitions vary, from season-long leagues to shorter knock-out cup competitions. The audiences for these competitions fluctuate, depending on the current popularity of participants, or in the case of events that take place in different locations, such as the Tour de France, on where the event is being held.

The attractiveness of sport content also varies depending on whether the participants represent local clubs or national teams, and it differs between domestic, regional and international competitions. When individual sports men and women capture the attention of their domestic market, or prove popular at an international level (whether due to their skill, charisma or another factor), this can transform the popularity of a sport within that territory.

We note that the large majority of EU consumers are broadly satisfied with the sports content services they already can access on the Internet (93% of users looking to access sports content on the Internet in their country stated that they were able to find what they were looking for¹⁵).

The EU has a vibrant audiovisual industry that responds to consumer demand with highly personalised and innovative services (typically by territory)

Sports content is a key type of content for audiovisual broadcasters and distributors. Broadcasters/distributors typically operate at national or regional level and so are responsive to national or regional cultural differences. The value of audiovisual content for these sports varies accordingly. For instance, golf's Open Championship involves participants from many different countries, and individual broadcasters receive bespoke feeds, as understandably they want content with a particular focus on golfers of interest to their local markets. Similarly, at UEFA events, broadcasters have access to extra cameras so that they can focus on specific players and coaches during transmission and a licence to request particular players for post-game interviews, depending on relevance to their audience. In addition, policy makers are highly aware of the importance of sport, and require certain events 'of national interest' to be televised on free-to-air (FTA) television (referred to as 'listed events' in the rest of this report).¹⁶

¹⁵ Flash Eurobarometer survey 411, conducted by TNS Opinion at the request of the European Commission, published August 2015.

¹⁶ For example, see Ofcom's *Code on Sports and Other Listed and Designated Events*, available at http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/ofcom_code_on_sport.pdf.

The varied range of factors that determine a sport's attractiveness to a certain audience, and thus its value to a broadcaster/distributor, mean that there is no single, standardised optimal product-development and commercial strategy that a sport can adopt to increase its value for consumers, owners and broadcasters/distributors at regional or pan-EU level. The EU is made up of 28 countries, with 24 official languages, and a number of other co-official (e.g. Welsh, Catalan) and non-European (Urdu, Turkish) languages spoken by inhabitants. There are more than 10 000 local TV channels, and no single pan-EU broadcaster has been able to operate successfully without creating multiple versions of itself for different audiences (e.g. Eurosport). Instead, the value of sports content differs by genre and audience, with territorial exclusivity the mechanism by which these differences can be appropriately framed and valued.

Leading sports rights owners invest in the attractiveness of competitions, talent and projects in the EU and beyond

All tiers of the sports ecosystem in Europe, from the elite professional level to grass-roots amateur youth teams, are partly funded by the income generated from exploiting sports audiovisual rights. Audiovisual products represent one of the most important sources of revenue for the organisers of top sports competitions, generating over 40% of their total budget (and as much as 90% in some cases).^{17,18} This income is very important to the European sports ecosystem, as it supports the “virtuous circle” illustrated above, by allowing reinvestment in young talent, improvements to sports infrastructure for participants at all levels, and delivery of high-quality sports events and relevant tailored audiovisual content services in response to the demand from fans in each EU Member State.

The importance of territoriality reinforces the virtuous circle

As an RBB Economics study concluded in 2009, “The use of exclusivity in sporting content deals is the standard practise *because* it delivers benefits for the seller (sport competition organiser), the purchaser (broadcaster/distributor), and consumers”.¹⁹ Territorial exclusivity is the main mechanism by which sports rights owners and broadcasters/distributors are able to optimise the level of personalisation of audiovisual sport content for an audience whilst also raising the amount of funding needed for sustainable reinvestment in sport.²⁰ Even notionally ‘European’ sports

¹⁷ See http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf.

¹⁸ For example, broadcast revenue accounted for 54% of the English Premier League clubs' revenue in 2013/14 (see *Annual Review of Football Finance*, Deloitte, 2015; available at <http://www2.deloitte.com/uk/en/pages/sports-business-group/articles/annual-review-of-football-finance.html>), and broadcast revenue accounted for 59% of total revenue for Italian clubs in 2012/13 (see <http://www.bbc.co.uk/news/business-27667472>). Also the Union of European Football Associations (UEFA) derives around 70% of its revenue from the sale of media rights to its events (see http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf). We note, however, that these percentages vary significantly between sports leagues and within sports leagues.

¹⁹ *The benefits of territorial exclusivity in the European audiovisual industry*, RBB Economics and Value Partners, February 2009; see http://www.valuepartners.com/downloads/PDF_Communicati/Media%20e%20Eventi/2009/Value-Partners_RBBEconomics_report.pdf.

²⁰ As the RBB Economics report continues, “exclusivity benefits the seller who can justify investing in quality programming and innovation knowing that they should be able to obtain a fair return on that upfront investment. Each individual sport competition is selected by a purchaser because of its unique characteristics that make it attractive to a particular demographic audience and content line-up or schedule. The exclusivity parameters play an important role in ensuring that the buyer can use the content it purchased to differentiate its service from that of third

channels such as Eurosport have developed multiple versions to cater for the territorial personalisation required by audiences, which is governed by language and the cultural proximity to the participating players and teams. Even events with worldwide appeal, such as the Olympics, are licensed at a domestic level, allowing coverage to be tailored to national tastes and specificities. Territorial exclusivity represents a ‘position of equilibrium’ which gives viewers a satisfactory level of personalisation whilst enabling rights owners to exploit the commercial value of their intellectual property.

Much of Europe’s regular sports content, particularly live content, is now available through pay-TV channels. Based on information from those sports rights owners which provided data to Analysys Mason, around 90% of the broadcasters which purchase the rights to content from the sports rights owners are pay-TV providers.²¹ However, there are exceptions to this, such as the Roland-Garros tennis tournament, for which the majority of foreign broadcasters/distributors that purchase rights provide FTA services. As a result, the potential impacts of portability and cross-border access initiatives are important not only for sports but also for pay-TV and FTA broadcasters/distributors – and ultimately for the end consumers.

Recent trends require the market and the regulation to evolve, but the regulatory framework should be reviewed carefully to avoid weakening of the existing virtuous circle

More generally, as TV trends have evolved in recent years, many audiences have begun to demand greater flexibility in terms of how they access content. As digitisation and IP distribution evolve, consumers increasingly expect that they should be able to watch their preferred content anywhere, at any time. Broadcasters/distributors are adapting their offerings to meet these requirements, by extending the range of platforms and formats for consumption. To reflect this, sports rights owners often sell their rights on a platform-neutral basis, giving broadcasters/distributors the freedom to serve consumers as they demand. Initially, this occurred domestically, with TV consumption expanding to laptops and mobiles,²² but now consumers are beginning, albeit in a limited fashion, to demand greater access across borders. As regards portability, 17% of respondents to a recent EC survey stated that, whilst in another EU Member State, they had tried to access audiovisual content for which they paid a subscription, with varying levels of success.²³ However, with regard to cross-border access, only 2% of consumers have tried to access sports content through an online service generally meant for users in another EU Member State.²⁴

Greater flexibility of access to content does not, however, inevitably mean that territorial exclusivity must be disrupted. It is critical that policies aimed at increasing access to content take into account the reality of the European sports market, where the demand for and value of sports

parties and has certainty as to how that content may be exploited (if at all) by third parties. This, in turn, benefits consumers who can enjoy high quality broadcast with constant innovation in technology”.

²¹ Response to Analysys Mason by 10 SROC members.

²² For instance, Ofcom’s *Communication Market Report 2015* highlighted how “Computers and smartphones are more popular than set-top boxes among 16–24 year olds for accessing on-demand and catch-up services”, Ofcom, 2015.

²³ Answers to Q12, *Flash Eurobarometer survey 411*, conducted by TNS Opinion at the request of the European Commission, published August 2015.

²⁴ *Ibid.*, answers to Q13.

content differs from one territory to another. Therefore, the effects of the DSM initiatives, both positive and negative, need to be weighed against one another.

It is in this context that this report provides some conceptual analysis of existing evidence to facilitate the debate and an assessment of the benefits and risks of the EC's current proposals for the portability of and cross-border access to online [sports] content services.

3 The impact of the portability proposal

In December 2015, the EC presented its draft regulation on the portability of online content services (generally referred to as ‘portability’ in the rest of this report). The objective of the regulation “*is to adapt the legal framework in order to ensure that the licensing of rights no longer presents barriers to cross-border portability of online content services in the Union*”.²⁵ At its core, the regulation’s objective is to enable users to access online content services that they legally subscribe to in their home Member State whilst they are temporarily present in another Member State. A critical requirement for allowing service providers to provide cross-border portability of online services without acquiring the relevant content rights for other Member States is the implementation of a verification process in order to ascertain consumers’ country of residence. The scope of the EC’s proposal includes both paid and free online content services (as long as the user’s residential Member State can be verified).

This section contains an impact assessment of the portability proposal. Before looking at the effect on each type of stakeholder (i.e. consumers, sports rights owners and broadcasters/distributors), we describe and define the hypotheses involved in our assessment.

3.1 Description and definitions of hypotheses key to our assessment

Portability would give EU consumers who legally purchase an online content service in their home country the ability to access and use that service while temporarily in another Member State. In relation to our assessment, we understand that portability of online content services is not intended to change the underlying territorial and exclusive structure of sports content rights (with the associated level of personalisation to reflect the diverse range of languages and culture across the EU).

Due to the prevalence of territorial rights, delivery of audiovisual content over the Internet is very often subject to technical or legal restrictions. In practice, therefore, access to *services* does not necessarily imply access to *content*.

The portability of online content services is conceived as an exception to the territoriality of the rights acquired, by establishing the legal fiction that there is no exploitation of the licensed rights outside the home territory, even when a customer from that home territory is physically located elsewhere in the EU. Where rights have been granted on an exclusive basis in a territory, in practical terms, portability represents an exception to the territorial exclusivity of the rights in the territory²⁶ that the customer visits (overcome only by the legal fiction): for example, coverage of

²⁵ *Proposal for a regulation of the European Parliament and of the Council on ensuring the cross-border portability of online content services in the internal market*, European Commission, 9 December 2015.

²⁶ The exclusive territorial right of the copyright/IP owner to authorise copying/use as well as an exception to the territorial exclusivity of the rights licensed. It is worth mentioning that providing access to consumers in other countries would otherwise put the broadcaster in breach of IP.

the annual Wimbledon tennis championships is exclusive to the BBC in the UK, but exclusive to beIN SPORTS in France.²⁷ Therefore, if a beIN SPORTS subscriber normally residing in France watches Wimbledon online via beIN SPORTS while in the UK, portability presents an actual reality which runs counter to expected exclusivity of the BBC's acquired rights in the UK; and the contracts that beIN SPORTS and the BBC have with the All England Lawn Tennis and Croquet Club (which holds the rights) will have to take that fact into account (even though the legal fiction means that there is no legal contradiction). As a result of the need to cater for exceptions of this kind, it is clear that portability raises important questions related to the *scope, duration and impact* of portability on contracts.

3.2 Impact assessment by stakeholder

In the following subsections we summarise the key impacts that portability of online content services would have on each type of stakeholder, namely:

- consumers (Section 3.2.1)
- sports rights owners (Section 3.2.2)
- broadcasters/distributors (Section 3.2.3).

Please refer to Annex A.1 for a broader assessment of the impacts, including the corresponding evidence to support each pro, con and uncertainty (often based on existing literature).

3.2.1 Consumers

Figure 3.1: Key impacts on consumers of portability of online content services [Source: Analysys Mason, 2016]

Outcome	Summary of the impact
Pro	European consumers who currently use online subscription services could still watch the sports content they acquired in their home market whilst travelling in the EU – according to Bomsel and Rosay ²⁸ and the EC this represents about 5% of EU consumers; a finding of the Eurobarometer survey was that only 7% of those who pay for a subscription to audiovisual content in Europe have tried to use it while in another EU Member State and had an issue, and 54% of subscribers see no need for doing so in the future. ²⁹
Con	Consumers would be likely to face a price increase, as most broadcasters/distributors would pass on higher costs of implementing the portability system – this is suggested by theoretical evidence from the EC ³⁰ and Bomsel and Rosay's 2013 study.

²⁷ *beIN SPORTS welcomes Wimbledon*, All England Club, 8 November 2013.

²⁸ *Why territories matter – vertical restraints and portability in audiovisual media services*, Olivier Bomsel and Camille Rosay, October 2013.

²⁹ Answer to Q12, *Flash Eurobarometer survey 411*, Conducted by TNS Opinion at the request of the European Commission, published August 2015

³⁰ *Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council to ensure the cross-border portability of online content services in the internal market*, European Commission, Brussels, 9 December 2015.

Outcome	Summary of the impact
Uncertainty	Uncertainty about the detailed aspects of implementing portability of online content services means that key stakeholders (particularly sports rights owners) would take great care before deciding to include sports online content in portable services. Such a development could potentially include the need to restrict current geo-blocked online sports content services – there is theoretical evidence from the EC, ³¹ and SROC, the European Broadcasting Union (EBU) and the European Digital Media Association (EDIMA) notes identifying areas of uncertainty that require careful attention. These include a review of current geo-blocked practices but also new portability definitions, clauses in contracts, authentication systems (particularly for FTA online services) and a transition period.

3.2.2 Sports rights owners

Figure 3.2: Key impacts on sports rights owners of portability of online content services [Source: Analysys Mason, 2016]

Outcome	Summary of the impact
Pro	According to SROC members, a limited number of sports rights owners are already including some concept of portability clauses in their contracts (e.g. MotoGP), and some sports rights owners already have a few “next cycle” contracts in place that incorporate some concept of portability. Sales contracts that include portability could be kept broadly unchanged. In addition, inclusion of portability wording in future commercial cycle contracts might be facilitated – it might be possible for a limited number of rights sales contracts to be maintained as they are currently, as some contracts already make provision for portability (although more likely they would need some adjustment once details of an homogenous authentication and verification system associated with portability implementation had been agreed).
Con	According to the SROC, contracts would require renegotiation and redrafting – theoretical evidence suggests that numerous sports rights owners would have to undertake the complex and costly process of reviewing and renegotiating existing contracts.
Uncertainty	Uncertainty about the detailed aspects of implementing portability of online content services means that key stakeholders (particularly sports rights owners) would take great care before deciding to include online sports content in portable services. Such a development may potentially include the need to restrict current geo-blocked online sports content services – there is theoretical evidence from the EC, ³¹ and SROC, EBU and EDIMA notes identifying areas of uncertainty that require careful attention. These include a review of current geo-blocked practices but also new portability definitions, clauses in contracts, authentication and verification systems (particularly for FTA online services) and a transition period.

³¹ *Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council to ensure the cross-border portability of online content services in the internal market*, European Commission, Brussels, 9 December 2015.

3.2.3 Broadcasters/distributors

Figure 3.3: Key impacts on broadcasters/distributors of portability of online content services [Source: Analysys Mason, 2016]

Outcome	Summary of the impact
Pro	Potential for higher revenue (if broadcasters/distributors manage to monetise portability) and, in some particular cases, lower seasonal churn – in theory, mandatory portability of online content services may increase revenue and, in some cases, reduce subscriber churn for broadcasters/distributors, as portability reduces the necessity for seasonal churn (although for some sports there is a general absence – or at least a reduction – of premium content during holiday periods, and in this case portability would have limited or no effect).
Con	Complexity of implementing portability, particularly for FTA broadcasters/distributors – evidence from EDIMA ³² suggests that some broadcasters/distributors (especially FTA public service broadcasters) may find it challenging and costly, and may incur delays in implementing portability of online content services.
Con	Potential development of an ‘abuse’ of portability ³³ of online content services which could force sports rights owners and broadcasters/distributors to review the services provided online – theoretical evidence from Bomsel and Rosay ³⁴ and SROC inputs suggest that mandating portability without appropriately robust authentication and verification obligations may create ‘grey markets’ for portability services or lead to cross-border access ‘by the back door’. This in turn risks damaging the entire audiovisual industry and putting current revenue and national audiovisual industry investments at risk. Such developments could force SROC members to change their online distribution strategy.
Uncertainty	Uncertainty about the detailed aspects of implementing portability of online content services means that key stakeholders (particularly sports rights owners) would take great care before deciding to include sports content in portable services. Such a development may potentially include the need to restrict current geo-blocked online sports content services – there is theoretical evidence from the EC, ³⁵ and SROC, EBU and EDIMA notes identifying areas of uncertainty that require careful attention. These include a review of current geo-blocked practices but also new portability definitions, clauses in contracts, authentication systems (particularly for FTA online services) and a transition period.

³² EDIMA comments on content portability; see http://www.edima-eu.org/pdfs/latest_news/EDIMA%20comments%20on%20content%20portability.pdf.

³³ An abuse of portability may occur when a consumer benefits from illegally buying online access to content sold in another territory at a lower price than that charged in their home territory. This content would only be available for a temporary period, but this may be an attractive option for a consumer who wishes to view single events or events that have a limited duration (e.g. golf’s Ryder Cup).

³⁴ *Why territories matter – vertical restraints and portability in audiovisual media services*, Olivier Bomsel and Camille Rosay, October 2013.

³⁵ *Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council to ensure the cross-border portability of online content services in the internal market*, European Commission, Brussels, 9 December 2015.

3.3 Overall assessment

In Figure 3.4 we summarise the overall impact for each type of stakeholder and assess whether this is positive, neutral or negative.

Figure 3.4: Overall assessment of impact on stakeholders of portability of online content services [Source: Analysys Mason, 2016]

Stakeholder	Impact	Assessment
Consumers	Portability of online sports content services, if implemented properly, would meet the demand from a relatively small number of consumers, without unreasonably impacting the territorial exclusivity of sports audiovisual rights. However, this benefit might be outweighed by potential price increases on pay TV (as broadcasters/distributors pass on higher costs) and less availability of sports on FTA broadcasters' online services if the same robust authentication and verification requirements were not applied to FTA broadcasters/services. Uncertainty about the detailed aspects of implementing portability of online content services means that key stakeholders (particularly sports rights owners) would take great care before deciding to include sports content in portable services, which might negatively impact consumers.	
Sports rights owners	Most sports rights owners have made no provision for portability of online content services in their current contracts and would have to review and renegotiate them. Sports rights owners are keen to understand how the EC would be able to reduce uncertainties in the short term, particularly regarding the implementation of portability of online content services for pay TV and FTA. We understand that a significant proportion of premium sports rights audiovisual content is on pay TV, where there is somewhat less uncertainty. However, uncertainty would still remain regarding how to treat portability of sports rights sold to FTA channels that were then distributed by pay-TV platforms (which themselves offered portability of content services).	
Broadcasters/distributors	Some broadcasters/distributors might find it complex to implement portability of online content services. Academic studies have also suggested that there would be a risk of an abuse of portability (i.e. development of a grey market), due to differences in the price of sports content services between territories, caused by variations in national demand. Similar to the situation for consumers and sports rights owners, it would be critical to reduce the uncertainties that broadcasters/distributors faced in relation to implementation of portability.	

Legend:  positive  neutral  negative

4 Impact of the initiatives that implement cross-border access

This section analyses the four main hypothetical scenarios that we have identified for implementation of the DSM objective of cross-border access to content.

- cross-border access 1 – implementing **compulsory pan-EU licences** for online content rights (Section 4.1)
- cross-border access 2 – **banning geo-blocking** of online content services (Section 4.2)
- cross-border access 3 – permitting **passive sales** of online content services (Section 4.3)
- cross-border access 4 – **extending the ‘country of origin’** principle to the Internet (Section 4.4).

Any discussion regarding cross-border access to online sports content services must take account of available evidence concerning the relatively small proportion of EU consumers who demand sports content from other Member States. In fact the EC itself has acknowledged that the vast majority of users are satisfied with the sports content they are able to access in their own Member State. A survey carried out for the EC³⁶ found that only 2% of Internet users in the EU had tried to access sports content through an online service tailored for another EU Member State.³⁷ 93% of users wishing to access sports content on the Internet in their country stated that they were able to find what they were looking for. The level of interest in accessing or downloading sports content that is targeted at users in other Member States is lower than the interest in audiovisual or music content, likely due to the predominantly national demand for sports content. The survey found that 15% of users in the EU are interested in accessing sports content generally meant for users in other EU Member States.³⁸ Overall, 74% of users reported that they never or rarely access or download any sports content online.³⁹

Moreover, there does not seem to be a significant willingness to pay for online sports content. Evidence from the same survey suggests that between 0.01% and 2.7% of European citizens might be willing to pay for online sports content (bearing in mind that around 90% of the broadcasters that purchase the rights to content from sports rights owners in Europe are pay-TV providers). The large majority (82%) of EU consumers who have accessed sports on the Internet in the EU over the past 12 months have only done so when it is available free of charge.⁴⁰ Whilst 15% of EU consumers stated that they were interested in accessing sports content from other Member States only 2.7% of EU consumers would be willing to pay for it.⁴¹ In addition, fewer than 20% of intra-EU migrants (0.007% of the total EU population), a group more inclined to demand sports content

³⁶ *Flash Eurobarometer survey 411*, conducted by TNS Opinion at the request of the European Commission, published August 2015.

³⁷ *Ibid.*, answers to Q13.

³⁸ *Ibid.*, answers to Q17.

³⁹ *Ibid.*, answers to Q3.2.

⁴⁰ *Ibid.*, answers to Q5.

⁴¹ 18% of the consumers who responded would be interested in accessing sports content from other Member States.

services from their native EU Member States, are willing to pay for a monthly subscription to online sports content services.⁴² Plum Consulting found that over 80% of intra-EU migrants were ‘very likely’ to pay EUR0 for a monthly subscription (i.e. to take a free subscription), but this figure fell to under 40% when the price was EUR10, and under 20% at EUR25.⁴³

4.1 Cross-border access 1 – implementing compulsory pan-EU licences for online content rights

4.1.1 Description and definitions of hypotheses key to our assessment

If compulsory pan-EU licences were introduced for online content rights, this would be equivalent to the removal or banning of territorial licence areas smaller than the entire EU. These changes to the territorial structure of content rights would either affect services directly, or in conjunction with other mechanisms. We understand that compulsory pan-EU licences are unlikely to be the outcome of the current debate, but politically this scenario is probably the one which most closely reflects the wider Single Market objective.

Under the current legislative framework, sports rights owners are free to grant licences on any territorial basis that they choose. In practice, most audiovisual rights are licensed on a national basis, with some exceptions related to broadcasters whose areas of commercial operation reflect common languages/interests – e.g. some licences cover France/Belgium, Scandinavia (i.e. Sweden, Norway, Denmark) or Germany/Austria. The predominance of national rights applies both to traditional audiovisual rights (e.g. for exploitation on terrestrial, cable or satellite platforms) and to online rights.

Because audiovisual services are now accessible on most or all platforms (DTT, cable, satellite, IPTV, OTT) and device types (TV sets, PCs, tablets, mobile devices), audiovisual rights for several or all of these platforms and devices are commonly licensed together. Therefore, “traditional” TV rights and online rights are usually licensed on a platform-neutral basis in a given territory.

The EC has previously taken the view that national licences for audiovisual online content could constitute an obstacle to the functioning of the Single Market and could therefore be a barrier to achieving a DSM for audiovisual services in the EU.⁴⁴ One potential solution some have mentioned to overcome this obstacle is the concept of pan-EU licences, whereby an audiovisual service provider could obtain the right to exploit a given piece of content online across the whole of the EU.

In fact this is already possible, as a sports rights owner is able to grant a pan-EU licence if it wishes to. In practice, however, this approach is not prevalent and national licences are the norm, because there is no demand for pan-EU rights from broadcasters (there being no pan-EU audience,

⁴² Figure 2 and Figure 4 in *The economic potential of cross-border pay-to-view and listen audiovisual media services*, Plum Consulting, 2012. ‘Fewer than 20%’ represents 100% minus the 80% of consumers who would be willing to pay EUR0 for a monthly subscription.

⁴³ *The economic potential of cross-border pay-to-view and listen audiovisual media services*, Plum Consulting, 2012 (p.129, 163 and 191).

⁴⁴ *Economic Analysis of the Territoriality of the Making Available Right in the EU*, Charles River Associates for the EC, 2014.

advertising market, etc.). Consequently, the requirement for compulsory pan-EU licences would severely and unnecessarily restrict the contractual freedom of sports rights owners and broadcasters.

Compulsory pan-EU licences would also prevent sports rights owners from licensing *online* rights for territories smaller than the whole EU, and prevent distributors from offering sub-licences on a territorial basis.

The prevalent situation today is for audiovisual rights to be sold without distinguishing between transmission platforms (therefore including the right to transmit both online and on traditional TV), as traditional broadcasters throughout Europe exploit media rights and transmit content on all available platforms. The expectations of consumers, and indeed policy makers,⁴⁵ are that content should be available “anytime, anywhere, on any device” (ATAWAD). It therefore seems unrealistic to suggest that traditional TV rights could still be licensed on a country-by-country basis, either directly or indirectly via pan-EU licences granted to buyers which do not compete in the same territories, while requiring online rights to be licensed solely on a pan-EU basis.

Even if traditional TV rights could continue to be licensed on a territory-by-territory basis, an audiovisual service provider that wished to secure exclusivity (and derive the usual commercial benefit from that exclusivity) over a given piece of content that it has licensed for traditional TV exploitation would also need to acquire exclusive rights for all platforms, including online (a significantly more costly proposition, since online rights would have to be licensed on a pan-EU basis instead of just the territory in which the provider operates its business). If an audiovisual service provider acquired such an exclusive pan-EU licence, this would prevent service providers in other national markets, who have acquired the relevant traditional TV rights for their territory, from transmitting that content online (whether exclusive or non-exclusive), even though it may be standard practice and in line with market expectations for them to, for example, simulcast their traditional linear channel on the Internet. This would create a competitive restriction on the content proposition of these service providers even in their own national territory, as they would have to interrupt their online streams periodically to avoid transmitting the content for which they did not have online rights (thus making their offering less attractive to consumers).

As a corollary, it would become more difficult for sports rights owners to sell traditional TV rights outside the territory of the service provider which had obtained exclusive pan-EU online rights. The value of sports audiovisual content varies significantly from one EU market to another, and there is a risk that selling a pan-EU online licence would materially impact sales of that content for traditional TV outside the market of the broadcaster which acquires pan-EU online rights, whether due to a material decrease in rights fees or the inability to sell (because broadcasters today expect to be able to transmit content on all platforms as a matter of course). In addition, the online stream of a channel could be seen as a strong substitute for the traditionally delivered TV service, and so a

⁴⁵ The Mission Letter from Jean-Claude Juncker, President of the EC to EC Commissioner for Digital Economy & Society Günther H. Oettinger states that “[European citizens] should be offered access to services, music, movies and sports events on their electronic devices wherever they are in Europe and regardless of borders.”; see https://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/oettinger_en.pdf.

service provider would most probably acquire exclusive traditional TV rights only if it had exclusive pan-EU online rights.

The full repercussions and uncertainties regarding pan-EU licensing would need to be explored further if this scenario was to be implemented. For example, would a service provider which purchased the pan-EU rights to content (but did not broadcast/distribute it in each country) have the right to sub-license that content on an individual territory basis, including the online rights? And would there be a need for some sort of intermediary body? The recent sub-licensing arrangement related to the Discovery–BBC Olympics deal (with sub-licensing from a regional distributor to national distributors)⁴⁶ represents a return to territorial licensing, but involving a multi-territory umbrella rights holder.⁴⁷

In addition, a further uncertainty may arise regarding whether a pan-EU online rights holder could be *required* to sub-license to a particular operator (presumably national FTA) in order to comply with regulations on national listed events, even where the value of such a sub-licence would be materially reduced by the lack of online rights to complement traditional TV broadcast. Equally, if listed-events requirements were extended to online transmission, it could be argued that this would equate to creating a pan-EU listed-events regime rather than a national one.

In light of these issues, our assessment of this scenario assumes that compulsory pan-EU licences for online content rights would affect not only the territoriality of online content rights but also traditional TV rights.

4.1.2 Impact by stakeholder

The subsections below summarise the key impacts of compulsory pan-EU licences on each type of stakeholder. **Please refer to Annex A.2 for a broader assessment of the impacts, including the corresponding evidence for each pro, con and uncertainty.**

⁴⁶ The sub-licensing that is being pursued is part of the individual territory obligation as well as to comply with listed-events legislation.

⁴⁷ *BBC and Discovery sign long term Olympic Games partnership*, BBC, 2 February 2016; see <http://www.bbc.co.uk/mediacentre/latestnews/2016/olympics-rights>.

Consumers

Figure 4.1: Key impacts on consumers of compulsory pan-EU licences [Source: Analysys Mason, 2016]

Outcome	Summary of the impact
Pro	Theoretically, access to the online content services of a very large number of broadcasters/distributors. However, for consumers to benefit, those channels would need to continue operating and retain their ability to acquire the content that they do today. In principle, consumers could benefit from online access to the content of the around 600 sports TV channels already available across the EU (according to the European Audiovisual Observatory's MAVISE database), but theoretical arguments (including from the SROC) suggest that these services would be unlikely to retain access to the rights if pan-EU licences were mandated. However, evidence suggests that only a small number of consumers (e.g. those with knowledge of multiple languages) would benefit from greater choice.
Con	The existence of a single exclusive (online) provider across the whole of the EU would significantly reduce the incentive for that provider to personalise the coverage of sports content for each individual country (in the form of local celebrities, languages, video streams, camera angles, interviews with specific players, highlights, etc.). The grant of a pan-EU licence would not inevitably mean that the licence holder would personalise its sports coverage for the audience in each EU Member State – evidence from SROC members shows that sports content is currently highly diverse and personalised to reflect audience tastes, culture and language. ⁴⁸ Even if multiple providers had (non-exclusive) pan-EU rights, the lack of exclusivity would have a similar effect of reducing the incentive for each broadcaster to invest in personalisation for its territory when its chances of generating a commercial return had been reduced.
Con	Consumers would have to purchase online access to content at a price that reflected its value in the market where it was most popular (not necessarily their own market), which would usually mean the market where it was most expensive. This could make the service unaffordable to many (and could lead to a higher level of piracy outside the “popular market”), or there might be no FTA availability of the relevant content online – according to SROC members, domestic sports rights owners might have to consider restricting the online rights they offered internationally in order to protect their domestic market value, while other international bodies might have to consider whether to license online at all.
Con	Less diversity of content, particularly in smaller and poorer EU countries, due to broadcasters/distributors focusing on consumers in a few of the larger and richer EU countries. It is possible that pan-EU licensing would lead to a reduction in the number of sports channels available to users in the EU (currently around 600) or at least to a reduction in the number of channels broadcasting personalised sports content – theoretical arguments (including from the SROC) suggest it is unlikely that many of these services could continue acquiring rights to content if pan-EU licences were made compulsory. Premium sports content is considered to be one of the main drivers of pay-TV subscriptions in Europe; the inability of smaller local pay-TV operators to compete with larger multinational providers would likely lead to fewer pay-TV operators overall and hence more generic services.

⁴⁸ Responses provided to Analysys Mason by the SROC are summarised in Annex A.

Outcome	Summary of the impact
Con	Consumers might suffer due to less competition in the market – RBB Economics concluded that consumers could face the negative effects of less competition (e.g. higher prices for pay TV) as a result of compulsory pan-EU licensing. ⁴⁹ Also, with less competition, there would be less incentive for broadcasters to invest in better-quality productions, technology and services.
Uncertainty	Prices might increase, depending on where a consumer subscribed – evidence from RBB Economics and Bomsel and Rosay suggests significant differences in pricing across Europe. Some consumers would undoubtedly benefit from having an average price across Europe, but for others pay-TV services would become unaffordable, as prices would inevitably be set in line with those charged in more economically viable markets.
Uncertainty	Inherent contradiction between national listed events and pan-EU licences – policy and regulation are imposed at a national level. The concept of events of national importance and the benefit of access to such events by the general public (for whom such events have specific resonance and importance) must be open to question – compulsory pan-EU licensing would ignore both the existence of variations between countries regarding which events were considered of national importance <i>and</i> the negative effect on competition for rights acquisition.

Sports rights owners

Figure 4.2: Key impacts on sports rights owners of compulsory pan-EU licences [Source: Analysys Mason, 2016]

Outcome	Summary of the impact
Con	Demand from broadcasters is national, not pan-EU – evidence from RBB Economics and SROC members suggests there is no demand for pan-EU licences, as even when both national and pan-EU options are available the rights are acquired by territory/language.
Con	Territorial licences are the result of freely chosen strategy and operational choices made in response to demand; with compulsory pan-EU licences these choices would be limited and the output inefficient – sports rights owners would lose the freedom to choose to sell rights to FTA or pay-TV operators in different territories. Evidence from SROC members (e.g. R&A ⁵⁰) suggests that services are tailored to each market in response to local viewing habits/preferences and culture.
Con	Pan-EU licences are contrary to the territorial structure of the marketplace – evidence from SROC members and KEA ⁵¹ suggests that the introduction of a compulsory ‘one size fits all’ approach to a complex and fragmented commercial landscape that differs significantly by territory and language would run contrary to demand and would be detrimental to sports organisations (and in turn broadcasters/distributors and consumers).

⁴⁹ RBB Economics and Value Partners highlighted in a 2009 report how there are broadly two models of pay TV in Europe; see *The benefits of territorial exclusivity in the European audiovisual industry*, February 2009, available at http://www.valuepartners.com/downloads/PDF_Comunicati/Media%20e%20Eventi/2009/Value-Partners_RBBEconomics_report.pdf.

⁵⁰ The R&A organises The Open, golf’s oldest and most international major championship in St Andrews, along with a number of other amateur and junior golf events.

⁵¹ *Multi-Territory Licensing of Audiovisual Works in the European Union*, KEA, October 2010.

Outcome	Summary of the impact
Con	For owners of rights to national sports competitions, a reduction in revenue from outside their domestic market – forcing buyers to purchase less attractive packages would reduce the most important sources of revenue for European sports rights owners, as evidenced by SROC members.

Broadcasters/distributors

Figure 4.3: Key impacts on broadcasters/distributors of compulsory pan-EU licences [Source: Analysys Mason, 2016]

Outcome	Summary of the impact
Con	Territorial licences are the result of freely chosen strategy and operational choices made in response to demand; with compulsory pan-EU licences these choices would be limited and the output inefficient – sports rights owners would lose the freedom to choose to sell rights to FTA or pay-TV operators in different territories. Evidence from SROC members (e.g. R&A) suggests that services are tailored to each market in response to local viewing habits/preferences and culture.
Con	For pay-TV broadcasters which were unable to acquire the pan-EU rights (not just unsuccessful large media groups but also smaller broadcasters (particularly in small EU countries) which could not compete financially) there would be a loss of subscribers and revenue; and FTA broadcasters would lose core audience and revenue – theoretically, pan-EU licensing would result in fewer operators being able to purchase valuable content, and thus many operators would not be able to offer subscribers what they wanted.
Con	In general, broadcasters/distributors would have to pay a higher fee for a pan-EU licence than for one covering just their domestic territory, and so they would incur an expense for territories in which they did not operate. In particular, small broadcasters/distributors would lose out as the cost of pan-EU rights would be beyond their means – it is unlikely that smaller players (and by extension all players in small countries) could compete to acquire any rights for content that was attractive in larger countries; evidence from RBB Economics and Value Partners suggests that the cost of rights at the EU level would be prohibitive for any small-country broadcaster/distributor. ⁵²
Con	Historically, pan-EU audiovisual distributors have always had to create national operations in order to serve audiences satisfactorily, despite some earlier attempts to establish EU-wide operations – SROC evidence from previous attempts suggests that pan-EU offers were unsuccessful, with pay-TV operators developing national operations to meet demand from local/national audiences.
Con	Less diversity of sports content than when involving national broadcasters/distributors – theoretically, it is possible that broadcasters/distributors could have an incentive to focus on content that is more easily exploited across borders.
Con	Distribution strategy differs according to sport and territory – evidence from the Association of Commercial Television in Europe (ACT) suggests that personalisation of services could be lost. ⁵³

⁵² *The benefits of territorial exclusivity in the European audiovisual industry*, RBB Economics and Value Partners, February 2009; see http://www.valuepartners.com/downloads/PDF_Comunicati/Media%20e%20Eventi/2009/ValuePartners_RBBEconomics_report.pdf.

⁵³ *Response to public consultation on the review of the EU copyright rules*, ACT, March 2014.

4.1.3 Assessment

In Figure 4.4 we summarise the overall impact for each type of stakeholder and assess whether this is positive, neutral or negative.

Figure 4.4: Overall assessment of impact on stakeholders of compulsory pan-EU licences [Source: Analysys Mason, 2016]

Stakeholder	Impact	Assessment
Consumers	High negative impact on consumers due to a reduction in personalisation of content, reduced choice of channels and content, and potentially higher prices.	
Sports rights owners	Substantial negative impact on rights owners, arising from a reduced ability to meet demand from broadcasters/distributors, reduced competition among broadcasters for their rights, less personalisation of content for fans in different countries, and reduced contractual freedom. When considering sports rights owners whose events are subject to listed-events legislation, the negative impacts on competition, value and contractual freedom would be greatly amplified.	
Broadcasters/distributors	Smaller broadcasters/distributors and FTA broadcasters (the majority of broadcasters in the EU, in terms of numbers) would have a greatly restricted ability to compete with the largest broadcasters/distributors in Europe, in terms of investing in sports content. The limited availability of premium sports content would lead to many broadcasters losing subscribers and revenue.	

Legend:  positive  neutral  negative

4.2 Cross-border access 2 – banning geo-blocking of online content services

4.2.1 Description and definitions of hypotheses key to our assessment

As a result of the prevalence of territorial rights, delivery of audiovisual content over the Internet is very often subject to a check on the location of the user. If the host believes that the user's IP address is located outside the territory where the rights have been cleared, the user is prevented from accessing the content, a procedure known as 'geo-blocking'. A user from one Member State may therefore be unable to access content distributed by an online broadcaster/distributor from another Member State. For example, a consumer located in France may not be able to use the BBC's live online service, as the BBC is able to identify and block the French IP address.

A ban on geo-blocking would be designed to stop distributors preventing access to online content services solely due to the geographical location of a consumer in Europe, as this is inconsistent with the principles of the DSM. However, such a ban could potentially result in the same outcome as compulsory pan-EU licence, as anyone in the EU would be able to access the same content. As with this other cross-border access scenario, this would create a problem in relation to rights which are negotiated on a national and territorial basis, and banning geo-blocking would prevent broadcasters from fulfilling their contractual obligations related to any territorial rights they may have acquired and from meeting any commitments in terms of national exclusivities.

A ban on geo-blocking would result in the removal of online services that are specifically created for the benefit of consumers who may not be served by the broadcasters/distributors in their territories. For example, fans of golf's Ryder Cup in Croatia, Cyprus, Greece, Hungary, Luxembourg, Romania and Slovenia are not served by any broadcaster/distributors in their territories, as overall demand in these individual markets is insufficient. The European Tour therefore invested in its own free online service to ensure that golf fans in these countries can watch the event. This online service relies on the ability to restrict streaming to only these seven countries, without infringing the rights granted to broadcasters/distributors in the other 21 Member States. Without the ability to impose geo-blocking, the European Tour would stop this service and these consumers would lose free access to the Ryder Cup.

Therefore, our assessment below is based on the assumption that a ban on geo-blocking would force most sports rights owners and broadcasters/distributors to implement pan-EU licensing and full cross-border access.

4.2.2 Impact by stakeholder

The sections below summarise the key impacts that a ban on geo-blocking would have on each type of stakeholder. **Please refer to Annex A.3 for a broader assessment of the impacts, including the corresponding evidence to support each pro, con and uncertainty.**

Consumers

Figure 4.5: Key impacts on consumers of banning geo-blocking [Source: Analysys Mason, 2016]

Outcome	Summary of the impact
Pro	Greater choice of broadcasters/distributors – in theory, consumers would be able to access sports content distribution services which were not available in their own Member State, although evidence suggests that only a small number of consumers might benefit.
Con	Significantly less personalisation of sports content (in the form of local celebrities, languages, video streams, camera angles, interviews with specific players, highlights, etc.) and fewer free offers in “dark territories” ⁵⁴ – evidence from SROC members shows that sports content is currently highly diverse and personalised to reflect audience tastes, culture and language.
Con	Reduction in content diversity and higher prices – according to SROC members, rights owners might have to stop selling rights outside of their home market, in order to protect their revenue in that home market.
Uncertainty	Prices might increase, depending on where a consumer subscribed – evidence from RBB Economics and Bomsel and Rosay suggests significant differences in pricing across Europe. The establishment of an average price across Europe would benefit some consumers but make services unaffordable for others.
Uncertainty	Incoherence of geo-blocking with listed events –there is uncertainty over how content that is a national listed event in one country yet valuable in another would be treated.

Sports rights owners

Figure 4.6: Key impacts on sports rights owners of banning geo-blocking [Source: Analysys Mason, 2016]

Outcome	Summary of the impact
Con	Likely loss of revenue due to some major sports rights owners withdrawing EU rights in response to the European arbitration risks that would threaten the value of their most important domestic rights – based on evidence from SROC members there seems to be a clear risk of loss of revenue for sports rights owners, due to the potential loss of subscribers and revenue for broadcasters/distributors as a result of price arbitrage resulting from a ban on geo-blocking. The response of sports rights owners might depend on the composition of their revenue, in terms of EU vs. domestic. In some cases, EU sales are relatively small compared to domestic ones, and rights owners might prefer not to sell their rights at a low value.
Con	Reduced circulation of content in Member States where there was marginal demand for sports content – as evidenced by SROC members, sports rights owners would not be able to provide free or on-demand services to improve circulation in Member States where demand was marginal (e.g. the Ryder Cup in Croatia, Cyprus, Greece, Hungary, Luxembourg, Romania and Slovenia), as this would dilute the value of the product purchased by broadcasters/distributors in territories where demand was high.

⁵⁴ ‘Dark territories’ are territories where the content rights for a sport are not sold due to insufficient demand for the content from consumers and broadcasters/distributors. The rights to ECB cricket content outside of the UK provide a good example of this: consumers in the dark territories for ECB cricket are able to access this content online, free of charge.



Broadcasters/distributors

Figure 4.7: Key impacts on broadcasters/distributors of banning geo-blocking [Source: Analysys Mason, 2016]


Outcome	Summary of the impact
Pro	Theoretically, without geo-blocking, broadcasters/distributors could have an enlarged market to serve. This argument is often used by the EC, especially when proposing initiatives to facilitate cross-border access.
Con	A loss of subscribers/revenue for pay-TV broadcasters and a loss of non-core audience and revenue for FTA broadcasters due to opportunities for price arbitrage – evidence from Bomsel and Rosay illustrates the strong incentives for, and high risk of, price arbitrage by consumers between broadcasters/distributors in different territories. ⁵⁵
Con	The value of content could be diluted and investments in personalisation put at risk – pay-TV broadcasters/distributors have questioned whether FTA broadcasters/distributors should grant viewers access to their content that is not geo-blocked, and for which pay-TV broadcasters have also purchased the rights.
Con	Small broadcasters/distributors would lose out as the cost of pan-EU rights would be beyond their means – it is unlikely that smaller players (and by extension all players in small countries) would be able to obtain any exclusive rights for content that was attractive in larger countries; theoretical evidence based on the value of rights suggests that the cost of rights at the EU level would be prohibitive for any small-country broadcaster/distributor.

4.2.3 Overall assessment

Figure 4.8: Overall assessment of impact on stakeholders of banning geo-blocking [Source: Analysys Mason, 2016]

Stakeholder	Impact	Assessment
Consumers	In theory, consumers would be able to access sports content distribution services that were not available in their own Member State, although these might provide limited personalisation and content could be limited, with high prices for many compared to national services.	
Sports rights owners	According to the SROC, major sports rights owners would be forced to change the way they sold rights if geo-blocking was banned. This could lead to a reduced content offering and higher prices. Also the free offers developed in “dark territories” would have to disappear.	

⁵⁵ *Why territories matter – vertical restraints and portability in audiovisual media services*, Olivier Bomsel and Camille Rosay, October 2013.

Stakeholder	Impact	Assessment
Broadcasters/distributors	Broadcasters/distributors, particularly smaller ones (which make up the majority in Europe, in terms of numbers), would have a reduced ability to invest in sports content at a pan-EU level, due to higher prices; there would be a negative impact for all broadcasters/distributors due to consumer opportunities for price arbitrage, and there are uncertainties about how a ban on geo-blocking could be applied to FTA broadcasters/distributors and national listed events.	

Legend:  positive  neutral  negative

4.3 Cross-border access 3 – permitting passive sales of online content services

4.3.1 Description and definitions of hypotheses key to our assessment

The EC’s Guidelines on Vertical Restraints (2010/C 130/01) draw a distinction between “active” and “passive” selling (on the Internet) as follows:

- “Active” sales mean actively approaching individual customers by for instance direct mail, including the sending of unsolicited e-mails, or visits; or actively approaching a specific customer group or customers in a specific territory through advertisement in media, on the internet or other promotions specifically targeted at that customer group or targeted at customers in that territory. Advertisement or promotion that is only attractive for the buyer if it (also) reaches a specific group of customers or customers in a specific territory, is considered active selling to that customer group or customers in that territory.
- “Passive” sales mean responding to unsolicited requests from individual customers including delivery of goods or services to such customers. General advertising or promotion that reaches customers in other distributors’ (exclusive) territories or customer groups but which is a reasonable way to reach customers outside those territories or customer groups, for instance to reach customers in one’s own territory, are considered passive selling.

In these Guidelines, the EC also states that:

“In general, where a distributor uses a website to sell products that is considered a form of passive selling, since it is a reasonable way to allow customers to reach the distributor. The use of a website may have effects that extend beyond the distributor’s own territory and customer group; however, such effects result from the technology allowing easy access from everywhere. If a customer visits the web site of a distributor and contacts the distributor and if such contact leads to a sale, including delivery, then that is considered passive selling.”

However, it is important to underline that the EC wrote these guidelines in the context of vertical restraints in trade relating to the sale of physical goods, rather than services delivered by/via the Internet.

Under the current legislation and contractual practices, sports rights owners typically grant licences to audiovisual service providers on a territorial basis. As a result, consumers/viewers are generally prevented from accessing sport content services from another territory. In practice, broadcasters/distributors enforce this through technical mechanisms such as conditional access systems for traditional TV and geo-blocking for online services. There are various rationales behind the territorial restriction:

- The broadcaster has only paid for rights for that one territory (as another broadcaster has typically paid for rights in the territory where the potential subscriber/viewer resides, and from where the passive sale originated)
- To preserve the competitive landscape that prevailed at the time of bidding, as the amount that the broadcaster agreed to pay for the rights would have reflected that backdrop
- To maximise the opportunities for the broadcaster to generate the expected commercial return/benefit on its licence fee investment, and thus protect the value of the rights in that territory
- To maintain the incentive for a broadcaster to tailor the sports content that it makes available in its territory.

Consumers from one EU Member State ('country A') may be prevented from accessing audiovisual online services offered in other Member States, unless their service providers also hold the rights for country A. For example, a consumer in the Czech Republic can watch internally produced documentaries from France Télévisions on its Internet platform (Pluzz), as these programmes are produced in-house and France Télévisions is the worldwide rights holder. However, a foreign consumer (not French resident) is not legally entitled to watch a programme on Pluzz for which France Télévisions only has rights for France (e.g. the Roland-Garros tennis tournament).

However, the ECJ's judgment in the QC Leisure/Murphy case⁵⁶ set some limits to this territorial exclusivity in the satellite/DTH environment, concluding that if territorial exclusivity can be granted, one cannot impose contract obligations to protect that exclusivity "absolutely". The ruling means that the clauses in contracts between rights owners and broadcasters which prevent passive sales of satellite decoder cards and equipment outside the target territory of the broadcaster/distributor are not lawful. Interestingly though, the ECJ decided to limit its analysis to the satellite/DTH environment (and made no reference at all to the term Internet in its ruling), ignoring the analysis of its advocate general. The ECJ judgment could be interpreted as evidence that differentiation between active and passive sales/marketing is much more difficult to establish on the Internet than in the DTH/satellite environment.

⁵⁶ Football Association Premier League Ltd and others v. QC Leisure and others; and Karen Murphy v. Media Protection Services Ltd, Joined Cases C-403/08 and C-429/08, 4 October 2011.

Indeed, it is difficult to see how the concept of passive sales of content services is applicable to the Internet. Typically, the automated nature of the online sales, payment and delivery process means that the notion of a broadcaster ‘responding’ to a request from a user to buy a service is rather outdated. Also, the distinction between active/passive selling breaks down in an online environment where consumer behaviour tends to be search-driven and users do not usually seek out a particular service provider. Moreover, the advertising that a user sees on the Internet is frequently driven by a past request for a service of a particular kind (and which may then lead to a particular service provider) or for content that complements or relates to that service. In this context, the request from the consumer comes at or before the start of the sales process, rather than at the end or simultaneous with it. As such, it is the specific online behaviour of a consumer that prompts the receipt of advertising. Once such behaviour is detected, the consumer is properly described as being ‘sought out’ and ‘targeted’ by the advertiser/service provider. If, as a result, a consumer purchases a service (having clicked on a link or followed a banner ad) this should be defined as an active sale, not a passive one.

The concept of passive sales also raises some questions for FTA content services, which do not involve a “sale” process as such; it is therefore unclear how the concept of passive sales can or should be applied to FTA services.

Permitting passive sales of online sports content services would theoretically give a consumer from one EU Member State the ability to access any online sports audiovisual service which is available in any other Member State. Similarly, in theory, any audiovisual service provider located in the EU and offering an online service in the EU could serve a request to purchase/subscribe to its online service from an EU-based consumer located outside of the country/territory for which the service provider had acquired the content rights. However, this scenario would raise significant uncertainty, because, given the potential arbitrage opportunity available to consumers (due to differences in the value of services, based on variations in demand from one territory to another), broadcasters and rights owners would most likely change their approach to the market.

Permitting cross-border access by way of passive sales can be understood as (1) a commitment from service providers not to actively market/sell licensed content/services outside the territories for which they have obtained the relevant content rights, nor to tailor them for audiences in such other markets, but with (2) an acknowledgement that there is no contractual reason preventing the service provider from fulfilling an unsolicited request to purchase the service. This is at the core of our assessment.

One that favours passive sales may argue that the volume of passive sales would be negligible and there would be no resultant change to the market structure. However, it could be very difficult to forecast the actual impact of permitting passive sales of online services, given the potential for viral marketing of available online sports content services among users/viewers, e.g. in popular social media (and it is questionable whether such mechanisms are really “passive” in the Internet environment). As a result, some might argue that it is not possible to prevent passive sales from bringing major changes to cross-border consumption or effectively amounting to full cross-border access “through the back door”.

The major difficulty here is that both contractually and in terms of the commercial position of broadcasters in the consumer marketplace, sports audiovisual content is either exclusive or non-exclusive – there is no middle ground. Therefore, even if only a small group of consumers were to benefit from passive sales, broadcasters would have lost the benefit of being able to offer unique and exclusive content to consumers in their market. In such circumstances, the commercial threat from passive sales would be likely to translate into a lower rights fee for sports rights owners, which would likely consider how to adapt their licensing strategy for online rights. The outcome could be a decision to sell just one single (pan-) EU licence (for domestic rights owners) or going as far as not licensing online rights at all (for international rights owners).

According to stakeholders we interviewed for this study, permitting passive sales of online services would potentially be much more disruptive than in the case of the passive sale of satellite pay-TV decoder cards and equipment, as the technical and cost barriers to fulfil an order and receive the service are much lower for online services (for example, there is no need to install and orientate a suitable dish, or purchase and maintain a set-top box), and the Internet is not subject to the same “physical” geographic limitations which apply to satellite delivery (such as satellite footprint and orbit/orientation).

In the following subsections we present our assessment of the impact of permitting passive sales of online sports content services. This assessment is based on the assumption that rights owners and broadcasters/distributors perceive passive sales in the Internet environment as being impossible to manage separately from active sales. From our discussions with stakeholders, their perception is that it is highly questionable whether active and passive sales can be distinguished on the Internet, and that viral marketing and similar techniques could potentially have a huge impact on consumers. Specifically, passive sales could lead broadcasters to change their service offerings and increase pricing to prevent any arbitrage opportunity, and rights owners to change the way they license their rights to broadcasters in the first place (or even decide not to license online sports content).

4.3.2 Impact by stakeholder

The subsections below summarise the key impacts that passive sales of online content services would have on each type of stakeholder. **Please refer to Annex A.4 for a broader assessment of the impacts, including the corresponding evidence for each pro, con and uncertainty (often based on existing literature).**

Consumers

Figure 4.9: Key impacts on consumers of permitting passive sales [Source: Analysys Mason, 2016]

Outcome	Summary of the impact
Pro	Theoretically, a greater choice of distributors, but only for a relatively small proportion of consumers who knew how/where to find them and had the language capability – subject to changes from sports rights owners and broadcasters/distributors which might reduce the services offered online (as mentioned by SROC members). The incremental demand from second-language speakers could be somewhat limited, however. Plum Consulting has previously highlighted how only a small proportion of EU citizens (an estimated 7%) are proficient in a second EU language. This would limit the number of consumers who could enjoy more content and lower prices for content in a second language.
Con	European consumers are satisfied with their current content offering – according to the EC ⁵⁷ only 2% of European viewers are interested in cross-border access to Europe-wide sports content; this seems very low compared to the large majority of 93% of Europeans who are satisfied with the current offering, including services personalised by culture and language.
Con	Less availability of tailored content online for both FTA and pay TV because of the strategies of some key sports rights owners (adopted as a consequence of the EC legislation) – theoretical evidence from SROC members suggests there would be less availability of content, and potentially higher prices, for most consumers, because sports rights owners would need to maintain the value of their content by granting pan-EU licences (which would then reduce the number of potential broadcasters/distributors), or not licensing rights on the Internet at all.
Con	Less availability of free offers which are currently provided by sports rights owners in territories where there is no commercial demand from broadcasters/consumers (“dark territories”) – theoretical evidence from SROC members suggests there could be some changes to their current practice of providing sports rights free of charge in dark territories in order to meet the demand from a small number of consumers in those countries, and hopefully introduce more people to those sports. SROC members have indicated that this practice would be stopped, which would be detrimental to consumers who currently enjoy this content.
Uncertainty	It is unclear how the concept of passive sales could or should be applied to FTA services – major sports bodies are often subject to local listed-events legislation and so do not have the option of not licensing rights to FTA broadcasters. However, as FTA services are by definition not sold, it is unclear how the concepts of an active sale and a passive sale could be meaningfully applied. If the intention was to enable cross-border access when instigated by the consumer, this would translate into free and full cross-border access for all FTA services, with no regard for how this would disrupt the financing model of major sports and the highly negative impact on the value of those rights to pay TV and on the general competitive landscape for media rights.

⁵⁷ Answers to Q13, *Flash Eurobarometer survey 411*, conducted by TNS Opinion at the request of the European Commission, published August 2015.

Sports rights owners

Figure 4.10: Key impacts on sports rights owners of permitting passive sales [Source: Analysys Mason, 2016]

Outcome	Summary of the impact
Pro	<p>Passive sales could in theory facilitate the availability of sports content (for those sports rights owners whose content was not licensed in every EU Member State), in any countries where there was no licensed broadcaster, although this demand appears very small (based on data in reports from Plum Consulting in 2012 and the EC Eurobarometer).</p> <p>However, evidence provided by sports rights owners shows that the way sports content is distributed would change if passive sales were imposed on them and their licensees. The rationale for offering free coverage in “dark territories” would also disappear.</p>
Con	<p>National sports rights owners would be likely to lose revenue. Either their content would no longer be exclusive and would lose value (due to possible arbitrage between the various national offerings) or rights owners would focus on the most important market(s) (very often the national one) and not license in other territories, in which case they would also lose revenue. Based on evidence from SROC members, international sports rights owners without a domestic market might have to stop licensing Internet rights, due to the impact on the value of their core media rights of the cross-border access created by permitting passive sales.</p>
Con	<p>Reduction in competitive intensity during tender processes – rights are usually sold through competitive tender processes in each country. The timing of these tenders is not usually concurrent. Theoretically, broadcasters/distributors might feel that there was less need to compete in each country in which they operated, because they could rely on “passive sales” for those countries where they failed to acquire rights, particularly where their operating territories shared common languages. This would have a material impact on sports rights owners whose rights currently attract demand and competition among broadcasters in every country.</p>
Uncertainty	<p>It is unclear how the concept of passive sales could or should be applied to FTA services – major sports bodies are often subject to local listed-events legislation and so do not have the option of not licensing rights to FTA broadcasters. However, as FTA services are by definition not sold, it is unclear how the concepts of an active sale and a passive sale could be meaningfully applied. If the intention was to enable cross-border access when instigated by the consumer, this would translate into free and full cross-border access for all FTA services, with no regard for how this would disrupt the financing model of major sports and the highly negative impact on the value of those rights to pay TV and on the general competitive landscape for media rights.</p>

Broadcasters/distributors




Figure 4.11: Key impacts on broadcasters/distributors of permitting passive sales [Source: Analysys Mason, 2016]




Outcome	Summary of the impact
Con	There could be a loss of revenue to broadcasters/distributors due to significant opportunities for price arbitrage across the EU, given the current pay-TV price differential (an approximately six-fold difference between the lowest and highest prices in the EU17) – evidence from Bomsel and Rosay suggests significant price differences for pay-TV packages between countries and thus an opportunity for arbitrage, which might lead to broadcasters/distributors losing subscribers as consumers began to access online content services from cheaper broadcasters/distributors elsewhere in the EU.
Con	The risks of arbitrage between small and large broadcasters/distributors could affect the value of rights, potentially leading to sports rights owners changing the availability and licensing of rights online – according to evidence from SROC members there is a strong risk that the way content is sold would change overall, given the difference in value between the various markets. This would give large broadcasters/distributors an important competitive advantage, as they would have the financial capability to buy attractive sport content rights. It would then be very difficult for broadcasters/distributors in small territories to acquire attractive sport content.
Uncertainty	It does not seem practical or realistic to apply the concept of “passive sales” in the Internet environment to sports content services, particularly given how sports content is distributed. This is particularly the case for FTA services (which do not involve a “sale” as such – other than the licence fee), as cross-border access to FTA online services would be highly detrimental to the exclusivity of pay-TV content of other broadcasters/distributors (and thus to rights owners).
Uncertainty	It is unclear how the concept of passive sales could or should be applied to FTA services – major sports bodies are often subject to local listed-events legislation and so do not have the option of not licensing rights to FTA broadcasters. However, as FTA services are by definition not sold, it is unclear how the concepts of an active sale and a passive sale could be meaningfully applied. If the intention was to enable cross-border access when instigated by the consumer, this would translate into free and full cross-border access for all FTA services, with no regard for how this would disrupt the financing model of major sports and the highly negative impact on the value of those rights to pay TV and on the general competitive landscape for media rights.

4.3.3 Assessment

In Figure 4.12 we summarise the overall impact for each type of stakeholder and assess whether this is positive, neutral or negative.

Figure 4.12: Overall assessment of impact on stakeholders of permitting passive sales [Source: Analysys Mason, 2016]

Stakeholder	Impact	Assessment
Consumers	Although permitting passive sales of online content services may in theory provide a greater choice of distributors for consumers, if sports rights owners reduced the number of broadcasters/distributors to which they provided content, the choice for consumers could actually be significantly reduced. Significant uncertainties remain regarding the impact that passive sales would have on listed events.	
Sports rights owners	According to the SROC, many sports rights owners would be forced to reduce content sales in order to maintain exclusivity for buyers which represented the majority (or a significant proportion of) their revenue, which would reduce the revenue available to them; otherwise they would risk diluting the value of their content by selling to multiple buyers without the benefit of territorial exclusivity.	
Broadcasters/distributors	The opportunity for price arbitrage by consumers could have an impact on subscriber numbers and dilute the value of content for broadcasters/distributors, which would need to adapt their strategy accordingly (e.g. reduce their service offering and increase prices). Furthermore, the reduction in revenue might limit the ability of broadcasters/distributors to invest in sports content. The practical result of “passive sales” of online sport audiovisual services would likely be similar to a pan-EU licensing scenario, leading to the market distortions referred to previously, with broadcasters/distributors in small territories being effectively unable to acquire attractive sport content and FTA broadcasters potentially not being able to acquire online rights.	

Legend:  positive  neutral  negative

4.4 Cross-border access 4 – extending the ‘country of origin’ principle to the Internet

4.4.1 Description and definitions of hypotheses key to our assessment

The principle of country of origin (COO) was first developed in the context of audiovisual services, with the aim of mitigating the legal and administrative barriers associated with launching services in several EU countries and promoting a single market for audiovisual services.

In the Satellite and Cable Directive, the COO principle makes it clear that the ‘country of origin’ is the Member State where the original communication to the public of a satellite transmission takes place and provides a simple legal and administrative procedure for collective clearance of certain rights (linear simulcast of a terrestrial broadcast) in the country of origin. However, to avoid an undue negative impact and disruption for sports rights owners, the current Satellite and Cable Directive allows sports rights owners and broadcasters to use their contractual freedom to “contract out” and determine for themselves how their intellectual property is to be exploited.

Under the current debate and according to a recent consultation, one tool that the EC is considering as a way of implementing the DSM is to extend the COO principle of the Satellite and Cable Directive to the licensing of programming for delivery over the Internet. We understand that the primary aim may be to extend this principle to services which are made available on demand and are ancillary to traditional linear broadcast activities (e.g. catch-up TV), but the principle would also apply to all other online audiovisual content, including linear transmission and simulcast.

Under the Satellite and Cable Directive, sports rights owners are currently free to decide whether and on what terms to enter into single, multi-territorial, or pan-EU licences for a single service (given their freedom to ignore COO principles and the fact they are not bound by mandatory collective licensing of their content). In fact, sports rights owners and/or their licensees typically “contract out” of these principles and negotiate the rights individually for each territory.

In the analysis that follows we generally assume that this contractual freedom (i.e. the possibility to “contract out”) would be maintained if the COO principle were to be extended to the Internet (giving rights owners freedom to limit the territory for which communication to the public is allowed, and to use necessary techniques to limit the distribution of their content to the specific countries covered by the relevant licence which is acquired). **If this contractual freedom was to be removed or restricted so as to prevent sports rights owners from deciding the specific territory(ies) to be licensed, the scenario to extend the COO principle would be equivalent to the compulsory pan-EU licensing scenario and so would lead to the same impacts for consumers, sports rights owners and broadcasters as have already been highlighted for the pan-EU licensing scenario.**

4.4.2 Impact by stakeholder

The subsections below summarise the key impacts that extending the COO principle would have on each type of stakeholder. **Please refer to Annex A.5 for a broader assessment of the impacts, including the corresponding evidence for each pro, con and uncertainty.**

Consumers

Figure 4.13: Key impacts on consumers of extending the COO principle [Source: Analysys Mason, 2016]

Outcome	Summary of the impact
Pro	There would theoretically be a wider choice of general media services, but if contractual freedom was maintained and sports rights owners or their licensees contracted out of the collective arrangement, there should be no real changes for online sports content services. However, if contractual freedom was not properly safeguarded, SROC members have indicated that they might have to restrict the sale of rights for exploitation on online platforms throughout Europe.
Uncertainties	If contractual freedom was not maintained, extension of the COO principle would lead to full cross-border access “through the back door”, as the impacts would be the same as those under the scenarios to ban geo-blocking and implement compulsory pan-EU licences. This would be very disruptive for sports rights owners, as broadcasters/distributors would be able to broadcast everything online throughout Europe without acquiring or paying for a licence in each territory. Among other things, this would result in some form of commercial exploitation by broadcasters/distributors without remuneration for the rights owners, and would undermine the competitive tendering process for the sale of media rights, i.e. the exclusivity principles that play a large part in determining commercial value. According to SROC members, if sports rights owners had no contractual freedom to choose the territories to license, extending the COO principle to licensing of online content would lead to a reduction in content sold, less diversity of content and hence less choice for consumers.

Sports rights owners

Figure 4.14: Key impacts on sports rights owners of extending the COO principle [Source: Analysys Mason, 2016]

Outcome	Summary of the impact
Pro	Assuming contractual freedom was protected, sports rights owners would be able to choose the territory(ies) in which to license sports content.
Con	Potentially no more sports content on the Internet; some SROC members stated that if the COO principle was extended to the Internet without any guarantee of contractual freedom, sports rights owners might decide to stop licensing Internet rights, which would be prejudicial for consumers and broadcasters.
Con	According to SROC members, application of the COO principle to the licensing of sports content would be directly contradictory to the rights of intellectual property owners. If implemented without protecting contractual freedom, this would remove the ability of rights owners to license on a territorial basis (whether with or without exclusivity).

Outcome	Summary of the impact
Uncertainties	If contractual freedom was not maintained, extension of the COO principle would lead to full cross-border access “through the back door”, as the impacts would be the same as those under the scenarios to ban geo-blocking and implement compulsory pan-EU licences. This would be very disruptive for sports rights owners, as broadcasters/distributors would be able to broadcast everything online throughout Europe without acquiring or paying for a licence in each territory. Among other things, this would result in some form of commercial exploitation by broadcasters/distributors without remuneration for the rights owners, which would undermine the competitive tendering process for the sale of media rights, i.e. the exclusivity principles which play a large part in determining commercial value. According to SROC members, if sports rights owners had no contractual freedom to choose the territories to license, extending the COO principle to licensing of online content would lead to a reduction in content sold, less diversity of content and likely loss of revenue for sports rights owners.
Uncertainties	Uncertainty about whether contractual freedom would be maintained – if it was not, this would prevent sports rights owners from licensing rights by territory or group of territories as they do today and so would have a landscape-changing effect on the marketplace, as no broadcaster would be able to acquire exclusivity unless it was the only licensed broadcaster in Europe.

Broadcasters/distributors

Figure 4.15: Key impacts on broadcasters/distributors of extending the COO principle [Source: Analysys Mason, 2016]





Outcome	Summary of the impact
Pro	Theoretically, a larger potential market and audience than that of a single country or territory, although not necessarily all of the EU – extension of the COO principle would make it easier for a broadcaster/distributor to serve consumers in a larger number of Member States (from an operational perspective), if sports audiovisual rights could be acquired for all relevant operational territories, given the contractual freedom of rights owners.
Con	Potentially no more sports content on the Internet; some SROC members stated that if the COO principle was extended to the Internet without any guarantee of contractual freedom, sports rights owners might decide to stop licensing Internet rights, which would be prejudicial for consumers and broadcasters.
Con	According to SROC members, application of the COO principle to the licensing of sports content would be directly contradictory to the rights of intellectual property owners. If implemented without protecting contractual freedom, this would remove the ability of rights owners to license on a territorial basis (whether with or without exclusivity).



Outcome	Summary of the impact
Uncertainties	If contractual freedom was not maintained, extension of the COO principle would lead to full cross-border access “through the back door” as the impacts would be the same as those under the scenarios to ban geo-blocking and implement compulsory pan-EU licences. This would be very disruptive for sports rights owners, as broadcasters/distributors would be able to broadcast everything online throughout Europe without having acquired and paid for a licence in each territory. Among other things, this would result in some form of commercial by broadcasters/distributors without remuneration for the rights owners, and would undermine the competitive tendering process for the sale of media rights, i.e. the exclusivity principles that play a large part in determining commercial value. According to SROC members, if sports rights owners had no contractual freedom to choose the territories to license, extending the COO principle to licensing of online content would lead to a reduction in content sold, less diversity and personalisation of sports content, small broadcasters/distributors losing out.

4.4.3 Assessment

In Figure 4.16 we summarise the overall impact for each type of stakeholder and assess whether this is positive, neutral or negative. We note that removing the contractual freedom of sports rights owners (or extending the COO principle *and* banning geo-blocking) would result in a much more negative assessment of this scenario.

Figure 4.16: Overall assessment of impact on stakeholders of extending the COO principle [Source: Analysys Mason, 2016]

Stakeholder	Impact	Assessment (with contractual freedom)	Assessment (without contractual freedom)
Consumers	Consumers may benefit from having access to more broadcasters/ distributors’ services, and thus greater competition in their market. As far as sports audiovisual content is concerned, the <i>status quo</i> would be likely to remain, with contractual freedom protected. If contractual freedom was not protected, broadcasters’ access to content might be threatened, leading to less content available to consumers		
Sports rights owners	If contractual freedom is maintained, the effect on sports rights owners should be minimal; if this freedom was removed, however, extending the COO principle would lead to compulsory pan-EU licensing/full cross-border access		

Stakeholder	Impact	Assessment (with contractual freedom)	Assessment (without contractual freedom)
Broadcasters/distributors	<p>In theory, broadcasters/distributors might benefit in their general business operations from extending the COO principle to the Internet, due to a reduction in the barriers associated with entering a new market.</p> <p>Specifically in relation to sports audiovisual content, if contractual freedom was protected, then the <i>status quo</i> would continue. If contractual freedom was not protected, the negative consequences of compulsory pan-EU licensing and full cross-border access would result, implying a reduction in content sold, less diversity and personalisation of sports content; and small broadcasters/distributors would be at a disadvantage</p>		



Legend:  positive  neutral  negative





4.5 Overall assessment on cross-border access

In Figure 4.17 we compare the four scenarios involving cross-border access, in order to draw an overall conclusion about the impact that they would have on each type of stakeholder.

These scenarios would promote greater cross-border access to audiovisual content services. Although this would address the demands of a relatively small proportion of EU consumers, it would simultaneously bear significant risk of undermining the existing availability of sports audiovisual content services and the personalisation of sports coverage in response to consumer demand. An erosion of the personalisation of sports content and in many cases a price increase for online content services would be detrimental to the majority of EU consumers, and would have a negative impact on the ability of sports rights owners and national broadcasters/distributors to invest in diverse national audiovisual coverage and thus on the national diversity of sports content. These scenarios would also erode the contractual freedom that has enabled audiovisual contracts to be negotiated primarily at a territorial level. We note that all of the cross-border access scenarios entail removing the contractual freedom of sports rights owners and would significantly increase the risk that less content would be available to broadcasters (and therefore ultimately consumers) and/or simply no longer available on the Internet.

Figure 4.17: Impact of cross-border access scenarios on stakeholders [Source: Analysys Mason, 2016]

Cross-border access scenario	Overall assessment	Impact assessment
1 – Implementing compulsory pan-EU licences for online content rights		The current territorial licensing and rights market would collapse, with reduced exclusivity for broadcasters, fewer licensees, reduced incentive/ability for content to be personalised, and reduced contractual freedom for sports rights owners (whose income would be reduced, with a potential negative impact on the quality of sports events and possibly the availability of any sports content online). For consumers, there would be a reduction in the personalisation of content, reduced choice of content and potentially higher prices. Most broadcasters would not be able to afford rights at the EU level. Smaller broadcasters/distributors and FTA broadcasters (the majority of broadcasters in the EU, in terms of numbers) would have a greatly restricted ability to compete with the largest players.
2 – Banning geo-blocking of online content services		In theory, consumers would benefit from greater online access to sports audiovisual content in other territories; however, in practice, the landscape would end up being very similar to compulsory pan-EU licensing, and in reality major sports rights owners would be forced to adapt and potentially restrict (or remove) the availability of sports content online. Ultimately, an indirect effect of this scenario would be a collapse of the territorial licensing system.







Cross-border access scenario	Overall assessment	Impact assessment
3 – Permitting passive sales of online content services		<p>In theory, consumers could benefit from opportunities for price arbitrage between Member States. However, sports rights owners might be forced to restrict (or remove) the availability of sports audiovisual online content, given the risk that online passive sales would effectively lead to full cross-border access with the same negative impacts on consumers and broadcasters as for compulsory pan-EU licensing and a ban on geo-blocking. This would result in fewer licensees (if any) and less exclusivity for broadcasters, leading to less competition and a reduced incentive to personalise content, potentially a reduced choice of channels and content offered, and potentially higher prices for consumers in the long term. Ultimately, an indirect effect of this scenario would be a collapse of the territorial licensing system.</p>
4a – Extending the ‘country of origin’ principle to the Internet (<u>with</u> contractual freedom)		<p>In theory, this scenario might enable a wider range of broadcasters/distributors’ services to be made available to consumers, depending on the actual operations of broadcasters and their rights acquisitions.</p> <p>If the contractual freedom of rights owners was maintained, rights owners could still offer exclusivity to broadcasters which had invested in the rights, which would also give them an incentive to invest in personalisation of sports content.</p>
4b – Extending the ‘country of origin’ principle to the Internet (<u>without</u> contractual freedom)		<p>However, if there was no or limited contractual freedom, the current licensing and rights market would collapse in the same manner as for compulsory pan-EU licensing and the other cross-border access scenarios, leading to the same material negative impacts for consumers, rights owners and broadcasters/distributors. Ultimately, an indirect effect of this scenario would be a collapse of the territorial licensing system.</p>
Overall assessment		<p>The current territorial licensing and sports rights market (and associated sports online content services) would be directly or indirectly challenged, and SROC members would be forced to make significant changes to the way in which they sold their rights. Many broadcasters would be unable to buy rights, especially small players, which would be detrimental to consumers. As a result, consumers would see a reduction in the personalised content offered to them in their respective national markets and would probably have to pay higher prices for the same content.</p>




Legend:  positive  neutral  negative

5 Conclusions

Based on a detailed review of the existing literature, answers from SROC members to our questionnaire and theoretical assessments that are developed further in Annex A, our conclusion is that portability of online content services offers a superior alternative to the four hypothetical scenarios involving cross-border access, as they would significantly disrupt the model of territorial exclusivity that is intrinsic to sports content services. This is summarised in Figure 5.1.

Figure 5.1: Conclusions on impact of portability and cross-border access [Source: Analysys Mason, 2016]

Assessment	Consumers	Sports rights owners	Broadcasters/ distributors
Portability			
Cross-border access			

 positive
  neutral
  negative

In particular, portability (with robust verification obligations) of online sports content services would broadly meet the EC’s objective of giving consumers wider temporary access to online content as they move around the EU as if they were at home, whilst protecting the existing high levels of diversity and personalisation achieved by exclusive territorial licensing of sports audiovisual content within each EU Member State, and thus the EU as a whole.

The impact of the portability scenario should be broadly neutral for sports rights owners and broadcasters/distributors. We note that this would require solid authentication and verification mechanisms to avoid a negative impact on the current ecosystem. Moreover, we note that portability would be complex to implement for many small broadcasters and probably most FTA broadcasters. We understand that the EC’s latest proposals partially take this into account, and envisage that adoption of portability would be voluntary for FTA broadcasters (via an “opt-in” mechanism). This makes the proposal more appealing.

While the concept of cross-border access might initially appear to bring benefits to consumers, it would rely on broadcasters continuing their current approach for acquisition of sports rights (with exclusive territorial licensing). However, the impact on the competitive landscape for broadcasters and rights owners under cross-border access means that the distribution and availability of online sports content would inevitably have to change, with everyone (consumers, broadcasters and rights owners) being worse off as a result. Many broadcasters would be unable to buy rights, especially small players (many of which are probably from smaller countries), which would be detrimental to the majority of EU consumers. As a result, EU consumers would see a reduction in the personalised services offered in their respective national markets and would probably have to pay higher prices for the same content and services.

Annexes

The following material is provided as annexes to the main report:

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A.2	Implementing compulsory pan-EU licences for online content rights	10
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Annex A Detailed breakdown of evidence-based analysis by scenario and stakeholder

This annex provides detailed, evidence-based analysis of the pros, cons and uncertainties that may arise for consumers, sports rights owners and broadcasters/distributors from each of the five scenarios identified and described in the main body of this report (Sections 3 and 4).

For each hypothetical scenario the impact assessment would of course depend on the legal articulation of the mechanism used, and the response of each stakeholder. We have tried to anticipate the possible reaction of each stakeholder, but some important uncertainties remain which would affect the ultimate outcome of each scenario. We have attempted to take this into account, providing as much detail as possible in the explanation of each scenario; as mentioned in the introduction to this report, we had to take a stance regarding some of these uncertainties (based on what we assume is the most probable scenario). Readers should therefore note the caveat that some of the findings in this annex might change if the definitions of our scenarios were to be revised.

Each scenario is split into three subsections (pros, cons and uncertainties), and the repercussions for each type of stakeholder are addressed in turn, looking first at consumers, then sports rights owners, and finally broadcasters/distributors. As all of these stakeholders are part of the same value chain and do not operate in isolation, the decision and actions of one type of stakeholder would have an impact on the others; however, we have not taken account of these knock-on effects in our analysis.

The sections are presented in the same order as in the main body of the report. We have tried to be exhaustive in this annex, and what we consider to be the crucial points (marked **KEY IMPACT**) are the ones used in our main assessments in Sections 3 and 4.

A.1 Making the portability of online content services mandatory

A.1.1 Pros

In Figure A.1 below we present the advantages that may arise for consumers, sports rights owners and broadcasters/distributors from making the portability of online content services mandatory.

Figure A.1: Pros of making the portability of online content services mandatory [Source: Analysys Mason, 2016]

Stakeholder	Pros	Evidence
Consumers KEY IMPACT	European consumers who currently use online subscription services could still watch the sports content they acquired in their home market whilst travelling in the EU – according to Bomsel and Rosay and the EC this represents about 5% of consumers; a finding of the Eurobarometer survey was that only 7% of those who pay for a subscription to audiovisual content in Europe have tried to use it while in another EU Member State and had an issue, and 54% of subscribers see no need for doing so in the future.	In their 2013 report Bomsel and Rosay estimated that there could potentially be 24 million subscribers to portability services in Europe. ⁵⁸ This represents 4.7% of Europe’s population. ⁵⁹ Among them, those who subscribe to sports content would benefit from being able to port. In its Impact Assessment document the EC stated that “according to [its] estimation, the share of “portable users” of online subscription services will grow from 5.7% of European consumers in 2015 to 14% by 2020, meaning around 72 million people in Europe”. ⁶⁰ However, according to the EC, the vast majority of users are satisfied with accessing content available in their Member State. Only 2% of Internet users in the EU have tried to access any sports content through an online service in another EU Member State. ⁶¹
Consumers	Reduction in the use of virtual private networks (VPNs) by legal subscribers on the move – use of VPNs might decrease as consumers would have less incentive to use technical workarounds (although in relative terms this use currently appears negligible).	Currently, when consumers want to watch content abroad that they have acquired legally in their home Member State, they sometimes use VPNs to connect to the home territory version of a website (if they have the technical knowledge to do this). If portability of online content services were to be mandated, a consumer could watch acquired content while abroad in another EU Member State without using such third-party workarounds.
Sports rights owners KEY IMPACT	According to SROC members, a limited number of sports rights owners are already including some concept of portability clauses in their contracts (e.g. MotoGP), and some sports rights owners already have a few “next cycle” contracts in place that incorporate some concept of portability. Sales	Some rights owners already include provisions related to portability in contracts and may not have to alter them. For example, portability has also been included in the Premier League (PL) rights contracts from the 2016/17 season onwards; “portability will be allowed in the PL contracts with its broadcasters as from next season under certain conditions (e.g. secured sign in process based on residence, ban on active marketing)”. La Liga “included clauses on portability in contracts concluded with its

⁵⁸ *Why territories matter – vertical restraints and portability in audiovisual media services*, Olivier Bomsel and Camille Rosay, October 2013.

⁵⁹ The population of the EU is estimated at 503 million; see http://europa.eu/about-eu/facts-figures/living/index_en.htm.

⁶⁰ *Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council to ensure the cross-border portability of online content services in the internal market*, European Commission, Brussels, 9 December 2015.

⁶¹ Answers to Q13, *Flash Eurobarometer survey 411*, conducted by TNS Opinion at the request of the European Commission, published August 2015.

Stakeholder	Pros	Evidence
	<p>contracts that include portability could be kept broadly unchanged. In addition, inclusion of portability wording in future commercial cycle contracts might be facilitated – it might be possible for a limited number of rights sales contracts to be maintained as they are currently, as some contracts already make provision for portability (although more likely they would need some adjustment once details of an homogenous authentication and verification system associated with portability implementation had been agreed).</p>	<p>broadcasters as from the current season based on the residence criterion”. MotoGP “recognises portability in several of its contracts (as per broadcaster demand) based on mobile roaming services”, but requests broadcasters to verify that portability is only possible on SIM cards registered in the broadcaster’s own territory.</p>
Sports rights owners	<p>Reduction in the use of virtual private networks (VPNs) from legal subscribers on the move – use of VPNs could decrease as consumers would have less incentive to use technical workarounds (although in relative terms this use currently appears negligible).</p>	<p>Currently, when consumers want to watch content abroad that they have acquired legally in their home Member State, they sometimes use VPNs to connect to the home territory version of a website (if they have the technical knowledge to do this). If portability of online content services were to be mandated, a consumer could legally watch acquired content while abroad in another EU Member State without using such third-party workarounds.</p>
Broadcasters/ distributors	<p>Potential for higher revenue (if broadcasters/distributors manage to monetise portability) and, in some particular cases, lower seasonal churn – in theory, mandatory portability of online content services might increase revenue and, in some cases, reduce subscriber churn for broadcasters/distributors, as portability would reduce the necessity for seasonal churn (although for some sports there is a general absence – or at least a reduction – of premium content during holiday periods, and in this case portability would have limited or no effect).</p>	<p>Pay-TV subscription data shows that some consumers churn away from sports services when they go away on holiday (although this pattern varies significantly by sport, competition and country, based on seasonality and culture) or when there is a pause in the calendar of main sporting events (which often coincide with holiday periods). If a consumer could port his or her online content service while travelling, this would remove an incentive to churn, leading to an increase in revenue for broadcasters/distributors.</p>

KEY IMPACT

A.1.2 Cons

In Figure A.2 below we present the disadvantages that may arise for consumers, sports rights owners and distributors/broadcasters from making the portability of online content services mandatory.

Figure A.2: Cons of making the portability of online content services mandatory [Source: Analysys Mason, 2016]

Stakeholder	Cons	Evidence
Consumers	<p>Consumers would be likely to face a price increase, as most broadcasters/distributors would pass on higher costs of implementing the portability system – this is suggested by theoretical evidence from the EC and Bomsel and Rosay’s 2013 study.</p>	<p>The EC’s Impact Assessment⁶² recognised that consumers might face price increases as a result of mandating the portability of legally acquired content. It stated that “the impact of the intervention on consumer prices is directly linked to the potential costs associated with the intervention that service providers may bear – if such costs arise, service providers would be expected to pass them on to consumers”. It is unclear whether the EC has estimated the costs involved in implementing portability for <i>all</i> types of broadcaster/distributor (and thus the costs that would be passed on to consumers) or whether it has focused only on major pay-TV broadcasters/distributors with an existing conditional access system and geo-blocking system in place. In its Impact Assessment, the EC stated that “the direct costs of implementing [cross-border portability of online content services in the EU] would be marginal and relate to the re-configuring of the user authentication system from the geo-blocking approach to the temporary access approach. These would be absorbed in routine maintenance costs.” These maintenance costs might be marginal for large established pay-TV broadcasters, but they could be more significant for smaller broadcasters/distributors or FTA broadcasters that did not have a portability system in place, which might be forced to pass these costs on to consumers.</p> <p>In addition, Bomsel and Rosay’s 2013 study on portability concluded that as “the portability market is still in its infant stage and cannot benefit from the economies of scale that will occur when mature, if the portability option were to be offered at this stage, it would certainly cost much more than the current consumer’s willingness to pay for this service.” The study further stated that “A regulation</p>

KEY IMPACT

⁶² *Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council to ensure the cross-border portability of online content services in the internal market*, European Commission, Brussels, 9 December 2015.

Stakeholder	Cons	Evidence
		imposing cross-border licensing would not solve the pricing issue. It would more probably induce higher prices for all subscribers, to compensate the loss due to lower levels of exclusivity and the additional costs of locating consumers. A first consequence could thus be the exit of lowest-bidding consumers. ⁶³
Consumers	Without the requirement for a robust verification system, some SROC members (mainly national leagues) would move more events to more-secure pay-TV broadcasters/ distributors and thus there would be less access to sports content through FTA services – evidence from SROC and an EBU public statement on access to major sporting events (December 2015) suggests that consumers might have less access to sports content through FTA services, which would negatively affect consumers. Other sports rights owners would have no choice but to continue licensing FTA and would therefore have to accept the negative impact of portability unless the same verification and controls were also required for FTA portability.	One member of the SROC indicated that a likely repercussion of mandating the portability of legally acquired online content services is that “all live matches will probably be sold to pay-TV operators. No FTA live rights anymore”. ⁶⁴ This is due to fears about the ability of FTA providers to protect signal across borders. Such a result would be detrimental to consumers who are unable to afford pay-TV services. Pay-TV providers are better placed than FTA providers to guarantee the security of portability, as they have the infrastructure and experience related to authentication and restriction.
Consumers	The majority of European consumers are unwilling to pay for portability , which seems at odds with the industry’s technical and economic preference for pay-TV instead of FTA portability – evidence from <i>Flash Eurobarometer survey 411</i> and Plum Consulting’s 2012 report suggests that most EU consumers do not currently pay for online sports content, and that between less than 0.01% and 2.7% of EU citizens might be willing to do so.	The large majority (82%) of EU consumers who have accessed sports on the Internet in the EU over the past 12 months have only done so when it is available free of charge. ⁶⁵ Whilst 15% of EU consumers stated that they were interested in accessing sports content from other Member States, just 2.7% of consumers could potentially be willing to pay for it. ^{66,67} In addition, fewer than 20% of intra-EU migrants (0.007% of the total EU population) are willing to pay for a monthly subscription. A 2012 report by Plum Consulting ⁶⁵ highlighted how over 80% of intra-EU migrants were ‘very likely’ to

⁶³ *Why territories matter – vertical restraints and portability in audiovisual media services*, Olivier Bomsel and Camille Rosay, October 2013 (page 7).

⁶⁴ Response to Analysys Mason by the SROC.

⁶⁵ Answers to Q5, *Flash Eurobarometer survey 411*, Conducted by TNS Opinion at the request of the European Commission, published August 2015.

⁶⁶ 18% of the consumers who responded would be interested in accessing sports content from other Member States.

⁶⁷ Figure 2 and Figure 4, *The economic potential of cross-border pay-to-view and listen audiovisual media services*, Plum Consulting, 2012. ‘Fewer than 20%’ represents 100% minus the 80% of consumers who would be willing to pay EUR0 for a monthly subscription.

Stakeholder	Cons	Evidence
<p>Sports rights owners</p> <p>KEY IMPACT</p>	<p>According to the SROC, contracts would require renegotiation and redrafting – theoretical evidence suggests that numerous sports rights owners would have to undertake the complex and costly process of reviewing and renegotiating existing contracts.</p>	<p>pay EUR0 for a monthly subscription, but that this fell to under 40% when the price was EUR10, and under 20% at EUR25.⁶⁸</p> <p>Some major rights owners and many smaller sports rights owners in Europe may not have provisions for the portability of online content services in their current contracts. For instance, within the SROC, the Fédération Française de Tennis does not have “any existence of portability offers of audiovisual rights accepted and implemented in contracts”.⁶⁹ Similarly, the Ligue de Football Professionnel (LFP) in France states that “no specific provision relating to portability has been provided for so far”.⁶⁹</p> <p>The varying degrees to which different sports rights owners have provided for portability of online content services in contracts is related to a number of factors (the main one being demand from broadcasters/distributors). Until very recently, there was no concrete information that there would be a requirement for portability. It is also still unclear what the actual requirement might involve. Until the regulations have been finalised, sports rights owners will not know precisely what existing contracts need to provide for; and those rights owners who are trying to address this issue in advance of final legislation will not know whether further renegotiation will be required. This makes implementation of portability in a “consistent fashion” across all sports rights owners appear highly complex, and would be unlikely to happen in the short term (sport is not a “one size fits all” industry).</p>
<p>Broadcasters/ distributors</p> <p>KEY IMPACT</p>	<p>Complexity of implementing portability, particularly for FTA broadcasters/distributors – evidence from EDIMA suggests that some broadcasters/distributors (especially FTA public service broadcasters) might find it challenging and costly, and could incur delays in implementing portability of online content services.</p>	<p>Unlike pay-TV broadcasters/distributors, the vast majority of FTA TV broadcasters/distributors do not currently have a direct relationship with their viewers and are not in a position to prevent viewers in other EU Member States from accessing their content on a selective basis. It may be a costly and complex process for them to set up the required authentication platform for this. In its comment on the portability of online content services, EDIMA noted how the online services of public service broadcasters are not often technologically equipped to enforce or verify an authentication obligation.⁷⁰</p>

⁶⁸ *The economic potential of cross-border pay-to-view and listen audiovisual media services*, Plum Consulting, 2012 (p. 129, 163 and 191) and Screen Digest, presented in Annex G-6, *Why territories matter – vertical restraints and portability in audiovisual media services*, Olivier Bomsel and Camille Rosay, October 2013.

⁶⁹ Response to Analysys Mason by the SROC.

⁷⁰ EDIMA comments on content portability; see http://www.edima-eu.org/pdfs/latest_news/EDIMA%20comments%20on%20content%20portability.pdf.

Stakeholder	Cons	Evidence
Broadcasters/ distributors	<p>Potential development of an ‘abuse’ of portability of online content services which could force sports rights owners and broadcasters/distributors to review the services provided online – theoretical evidence from Bomsel and Rosay and SROC inputs suggest that mandating portability without appropriately robust verification obligations might create ‘grey markets’ for portability services or lead to cross-border access ‘by the back door’. This in turn would risk damaging the entire audiovisual industry and putting current revenue and national audiovisual industry investments at risk. Such developments could force SROC members to change their online distribution strategy.</p>	<p>In 2013, Bomsel and Rosay described how “on the consumer side, the willingness to pay for such services (portability) is still marginal, and if it rises, it will probably carry different patterns in different countries. Were a pan-EU portability option to be offered, it would create significant imbalances in the European market: consumers valuing portability would have an interest in buying it where the video service subscriptions were the cheapest. This may stimulate new kinds of grey markets”.⁷¹ This risk of grey markets could mean that sports rights owners and broadcasters/distributors would be forced to review current services to be provided online (probably restricting supply).</p>
Broadcasters/ distributors	<p>Potential loss of subscribers if quality of service (QoS) was not ensured with portability of online services (or increased delivery costs) – theoretical evidence from the EC and a video quality survey suggest that broadcasters/distributors could lose subscribers if they were unable to guarantee the quality of ported content, or else incur additional QoS distribution costs to ensure it.</p>	<p>There is a risk that a broadcaster/distributor or service provider might lose customers due to frustration over the QoS in the country where a customer was trying to access content whilst temporarily abroad, or incur high costs to improve its Europe-wide connectivity infrastructure. The EC acknowledged this in its Impact Assessment.⁷² Costs for broadcasters/ distributors could include:</p> <ul style="list-style-type: none"> • the cost of upgrading Internet connection of origin server in terms of bandwidth • the cost of a content delivery network. <p>The Impact Assessment cites a 2012 study which indicated that “viewers start to abandon a video if it takes more than 2 seconds to start up, with each incremental delay of 1 second resulting in a 5.8% increase in the abandonment rate” and “a viewer who experienced failure is 2.32% less likely to revisit the same site within a week than a similar viewer who did not experience a failure”.⁷³</p>

⁷¹ *Why territories matter – vertical restraints and portability in audiovisual media services*, Olivier Bomsel and Camille Rosay, October 2013.

⁷² *Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council to ensure the cross-border portability of online content services in the internal market*, European Commission, Brussels, 9 December 2015.

⁷³ *Video Stream Quality Impacts Viewer Behaviour: Inferring Causality Using Quasi-Experimental Designs*, 2012; see https://people.cs.umass.edu/~ramesh/Site/HOME_files/imc208-krishnan.pdf.

A.1.3 Uncertainties

In Figure A.3 below we present the uncertainties that may arise for consumers, sports rights owners and broadcasters/distributors from making the portability of online content services mandatory.

Figure A.3: Uncertainties associated with making the portability of online content services mandatory [Source: Analysys Mason, 2016]

Stakeholders	Uncertainties	Evidence
Consumers, sports rights owners and broadcasters/distributors <div style="background-color: #4a86e8; color: white; padding: 5px; text-align: center; font-weight: bold;">KEY IMPACT</div>	<p>Uncertainty about the detailed aspects of implementing portability of online content services means that key stakeholders (particularly sports rights owners) would take great care before deciding to include sports content in portable services. Such a development could potentially include the need to restrict current geo-blocked online sports content services – there is theoretical evidence from the EC,⁷⁴ and SROC, EBU and EDIMA notes identifying areas of uncertainty that would require careful attention. These include a review of current geo-blocked practices but also new portability definitions, clauses in contracts, authentication systems (particularly for FTA online services) and a transition period.</p>	<p>SROC, EBU and EDIMA notes suggest that there are practical details and aspects of portability of online content services that are unresolved, such as the method for authentication of devices, the number of devices a user could access and the number of days abroad that would be considered appropriate for portability. These issues raise problems for:</p> <ul style="list-style-type: none"> • consumers, who may find an inconsistent approach between broadcasters/distributors on the issues above confusing and highly frustrating • sports rights owners, which face uncertainty over adapting contracts accordingly • sports rights owners, which are keen to understand how the EC could “avoid cross-border access by the back door, and what stipulations will be put in place on authentication and verification, duration and number of devices”⁷⁵ • broadcasters, which face uncertainty over whether the EC would implement specific guidance covering all, some or none of these issues, and how it would affect relations with rights owners and consumers. <p>Other unresolved issues would also affect all stakeholders. These include uncertainty related to the transitional period and how the EC would support the transition to portability regulations. This would particularly affect rights owners and broadcasters/distributors.</p> <p>Another element of uncertainty relates to FTA channels carried on a subscription platform. In the UK, for instance, ITV may choose not to offer portability of its online services, as this is not compulsory for FTA. However, as ITV has the rights to broadcast the 6 Nations rugby tournament, and ITV is also carried on Sky and Virgin platforms (which would have to be portable as they are pay-TV services), portability could be de</p>

⁷⁴ Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council to ensure the cross-border portability of online content services in the internal market, European Commission, Brussels, 9 December 2015.

⁷⁵ Response to Analysys Mason by the SROC.

Stakeholders	Uncertainties	Evidence
		<i>facto</i> imposed on ITV. There is also some uncertainty about services of the rights owners themselves (such as UEFA.com) which require a login and password but have no solid authentication system: would they be covered by the regulation?
Consumers	Costs of implementing portability of online content services – there is theoretical evidence from the EC of uncertainty about the scale of costs for broadcasters/distributors to implement portability and what proportion of these costs would be passed on to consumers, or who else would be able to bear these costs.	The EC has openly admitted that there are uncertainties about the costs for broadcasters/distributors, and what proportion of these costs would be passed on to consumers. In its Impact Assessment, the EC stated that the “impact of the intervention on consumer prices is directly linked to the potential costs associated with the intervention that service providers may bear – if such costs arise, service providers would be expected to pass them on to consumers”. ⁷⁶
Broadcasters/ distributors	Uncertain scope of portability of sports content, depending on current “packaging” by content product and by content platform – there is theoretical evidence of uncertainty about whether, and if so how, portability would apply to all types of rights (platform, product) and the different implications this would have for the implementation of content portability.	Sports rights are “packaged” in different ways as part of the negotiations between broadcasters and sports rights owners. The ways in which rights are packaged increases the uncertainty about how portability of online content services could be applied. For example: <ul style="list-style-type: none"> • by platform: online portability would be likely to require a separate negotiation if a broadcaster/distributor had purchased rights specifically for one platform (e.g. satellite TV, cable, IPTV, DTT, Internet or mobile). For instance, Serie A in Italy has issued content rights to broadcasters/distributors that cover a single distribution platform, with live satellite TV rights sold separately from rights for live coverage on DTT). The key question is whether Internet rights would be sold separately from these rights or incorporated into them. This would have an impact on the way portability of online content services needed to be implemented by one or more players.⁷⁵ However, this problem is not universal. • by product: online portability would likely be built into existing (multiplatform) products, if a broadcaster/distributor had bought premium sports rights for a given product (e.g. live, near live or highlights across all platforms). For instance, the Premier League has sold live rights across all platforms. Similarly, broadcast rights for the 2018–2024 Olympic Games in Europe were sold on a multiplatform basis.⁷⁷

⁷⁶ *Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council to ensure the cross-border portability of online content services in the internal market*, European Commission, Brussels, 9 December 2015.

⁷⁷ *Study on sports organisers’ rights in the European Union: Final Report*, ASSER/IVIR, February 2014.

A.2 Implementing compulsory pan-EU licences for online content rights

A.2.1 Pros

In Figure A.4 below we present the advantages that may arise for consumers, sports rights owners and broadcasters/distributors from implementing compulsory pan-EU licences for online content rights.

Figure A.4: Pros of implementing compulsory pan-EU licences for online content rights [Source: Analysys Mason, 2016]

Stakeholder	Pros	Evidence
Consumers	<p>Theoretically, access to the online content services of a very large number of broadcasters/distributors. However, for consumers to benefit, those channels would need to continue operating and to retain their ability to acquire the content that they do today – in principle, consumers could benefit from online access to the <i>content</i> of the around 600 sports TV channels already available across the EU (according to the European Audiovisual Observatory’s MAVISE database), but theoretical arguments (including from the SROC) suggest that these services would be unlikely to retain access to the rights if pan-EU licences were mandated. However, evidence suggests that only a small number of consumers (e.g. those with knowledge of multiple languages) would benefit from greater choice.</p>	<p>The European Audiovisual Observatory (EAO) has identified around 600 sports channels in Europe (excluding channels that are not specifically sports-focused but also show sporting events, such as ITV1 in the UK).⁷⁸ All of these content services could become available throughout the EU, assuming that they all had an online version, that they continued to exist and that their rights/economics were not affected by the availability of pan-EU licences (which seems unlikely). This assumption seems only theoretical, as we understand that most of these sport TV channels have negotiated exclusive rights for a given country or territory and thus would not be able to exist and broadcast in the same form if there was no longer territorial exclusivity.</p>

⁷⁸ MAVISE database, European Audiovisual Observatory, extracted January 2016.

A.2.2 Cons

In Figure A.5 below we present the disadvantages that may arise for consumers, sports rights owners and broadcasters/distributors from implementing compulsory pan-EU licences for online content rights.

Figure A.5: Cons of implementing compulsory pan-EU licences for online content rights [Source: Analysys Mason, 2016]

Stakeholder	Cons	Evidence
Consumers	<p>KEY IMPACT</p> <p>The existence of a single exclusive (online) provider across the whole of the EU would significantly reduce the incentive for that provider to personalise the coverage of sports content for each individual country (in the form of local celebrities, languages, video streams, camera angles, interviews with specific players, highlights, etc.). The grant of a pan-EU licence would not inevitably mean that the licence holder would personalise its sports coverage for the audience in each EU Member State – evidence from SROC members shows that sports content is currently highly diverse and personalised to reflect audience tastes, culture and language. Even if multiple providers had (non-exclusive) pan-EU rights, the lack of exclusivity would have a similar effect of reducing the incentive for each broadcaster to invest in personalisation for its territory when its chances of generating a commercial return had been reduced.</p>	<p>Consumers currently benefit from agreements between broadcasters/distributors and rights owners for sports services to be tailored to the target market of the broadcasters/distributors. A pan-EU broadcaster/distributor might not be able to personalise programming in many languages, which is a particularly important element in maximising consumer enjoyment of sports content.</p> <p>Most European sports channels are personalised at a national level, as is most sports content. Personalisation encompasses a wide package of benefits for consumers, not just the use of local language. Before a sports match starts, personalised transmission involves audience-specific programme hosts and guests (e.g. well known ex-players/managers or journalists). During transmission of the content there is a focus on particular players (e.g. through the use of different camera angles), and after the game it is possible to tailor the choice of interviewee for post-game interviews and at press conferences.</p> <p>The R&A has stated that “several broadcasters receive bespoke unilateral feeds in addition to the generic world feed, and this is complemented by the on-site presence of certain broadcasters during the Open Championship week. Given the multinational field that takes part in the Open, broadcasters naturally want to have a particular focus on golfers relevant to their local market(s)”.⁷⁹ In addition, each broadcaster at UEFA events “has access to unilateral broadcast services (e.g. extra cameras, interviews, presentation) on-site at their relevant match in order to produce additional content unique to themselves”.⁷⁹ Furthermore, the FFT stated that “our broadcasters throughout Europe customize our worldfeed (ISS) with their own commentary in their own language. Some also ask for specific unilaterals, specific feeds depending on “their players’ matches”, as nationalities of the players are key to</p>

⁷⁹ Response to Analysys Mason by the SROC.

Stakeholder	Cons	Evidence
		<p>our broadcasters' contents".⁷⁹</p> <p>The rights for sports events are typically packaged and sold with language personalisation – for instance, the R&A notes that “due to the importance to consumers of ensuring content is suitably localised, multilingual territories such as Switzerland and Belgium are carved up and licensed predominantly on the basis of the differing local languages”.⁷⁹ There are 24 official recognised languages in the EU.⁸⁰ MotoGP content is transmitted in 29 different languages in Europe.⁷⁹ German Football League (Bundesliga) content is personalised by broadcasters, covering 35 countries and 19 languages in Europe.⁷⁹ FFT content is distributed in 16 languages in Europe.⁷⁹ Ligue 1 content is distributed by 22 different licensees in over 25 European countries (not including TV5 Monde's pan-regional rights).⁷⁹ Eurosport personalises its content by distributing it in 20 languages.⁸¹ La Liga content is personalised by language at a regional level in Spain (into Catalan, Valenciano, Euskerra and Galician).⁷⁹</p> <p>A pan-EU broadcaster which offered the same version of content to the whole EU and without the availability of territorial licences would be unable to provide the same level of diversity as the current system offers.</p>
<p>Consumers</p> <p>KEY IMPACT</p>	<p>Consumers would have to purchase online access to content at a price that reflected its value in the market where it was most popular (not necessarily their own market), which would usually mean the market where it was most expensive. This could make the service unaffordable to many (and could lead to a higher level of piracy outside the “popular market”), or there might be no FTA availability of the relevant content online – according to SROC members, domestic sports rights owners might have to consider restricting the online rights they offered internationally in order to protect their domestic market value, while other international bodies might have to consider whether to license online at all.</p>	<p>Bundesliga (German football) is one of the most popular foreign sport competitions in Poland and is regarded as “premium content” for broadcasters. Bundesliga matches reach a Polish audience of around 15 million viewers per season (“accumulated”), compared to 450 million viewers of the Bundesliga pay-TV service in the German home market (“accumulated”). An Internet access pass for these tailored services costs a Polish consumer less than 20% of the price of a pay-TV subscription in the Bundesliga core market (Germany).</p> <p>If pan-EU licensing was made compulsory, then because the exclusive audiovisual (Internet) rights for the core market (Germany) are the most valuable, the Bundesliga might only offer rights for a product that was tailored to the core German market and the interests of its own consumers (e.g. in the German language, with German-focused interviews, etc.). In this situation, a Polish consumer would only be able to watch all of the matches via the German service and would have to pay the (higher)</p>

⁸⁰ See http://ec.europa.eu/languages/policy/linguistic-diversity/official-languages-eu_en.htm.

⁸¹ Eurosport Group Fact Sheet, Eurosport, March 2015.

Stakeholder	Cons	Evidence
Consumers	<p>Less diversity of content, particularly in smaller and poorer EU countries, due to broadcasters/distributors focusing on consumers in a few of the larger and richer EU countries. It is possible that pan-EU licensing would lead to a reduction in the number of sports channels available to users in the EU (currently around 600) or at least to a reduction in the number of channels broadcasting personalised sports content – theoretical arguments (including from the SROC) suggest it is unlikely that many of these services could continue acquiring rights to content if pan-EU licences were made compulsory. Premium sports content is considered to be one of the main drivers of pay-TV subscriptions in Europe; the inability of smaller local pay-TV operators to compete with larger multinational providers would likely lead to fewer pay-TV operators overall and hence more generic services.</p>	<p>price charged in the core market. It would no longer be possible to watch a full service product tailored to Polish consumer interests, since distribution exclusively to the Polish market would be restricted by the EU's initiatives.⁸²</p> <p>In territories where demand for a particular sport is marginal, a national broadcaster/distributor would have less incentive to buy the rights at a pan-EU level if they were bought by a broadcaster/distributor in a market where the sport was very popular. If the broadcaster/distributor that had bought pan-EU rights to the content did not have a business case to serve the territory where demand was marginal, consumers would not have access to a localised version of this content (unless the geo-blocking of online content services was also banned). For instance, Sky, one of Europe's largest investors in sports audiovisual content,⁸³ has consumers in five European countries – Italy, Germany, Austria, the UK and Ireland. If Sky began to purchase pan-EU licences, consumers who were not served by its network, or in these languages, might lose out as their local products would no longer be available.</p>
Consumers	<p>Consumers might suffer due to less competition in the market – RBB Economics concluded that consumers could face the negative effects of less competition (e.g. higher prices for pay TV) as a result of compulsory pan-EU licensing. Also, with less competition, there would be less incentive for broadcasters to invest in better-quality productions, technology and services.</p>	<p>If pan-EU licensing led to a consolidation of broadcasters/distributors in Europe (which is likely to happen), consumers might suffer the effects of a lack of competition in the distribution market, such as higher prices and a more-limited choice of content. RBB Economics stated in 2009 that “the loss of territorial exclusivity could also lead to consolidation amongst DTH broadcasters across Europe which would further reduce competition, lessen innovation, increase retail prices and result in the development of more homogenous content across Europe and more imported content from the US”.⁸⁴</p>

⁸² Response to Analysys Mason by the SROC.

⁸³ *Sky creates Europe's leading entertainment company*, November 2014; see <https://corporate.sky.com/media-centre/news-page/2014/sky-creates-europes-leading-entertainment-company>.

⁸⁴ *The benefits of territorial exclusivity in the European audiovisual industry*, RBB Economics and Value Partners, February 2009; see http://www.valuepartners.com/downloads/PDF_Comunicati/Media%20e%20Eventi/2009/Value-Partners_RBBEconomics_report.pdf.

Stakeholder	Cons	Evidence
Consumers	Only a small minority of consumers would benefit from pan-EU licences – Plum Consulting and TNS Opinion estimated that only 0.03% of the total EU population are long-term and short-term migrants and travellers who might be interested in accessing the audiovisual media services of another country.	In a 2012 study for the EC, Plum Consulting and TNS Opinion estimated that the size of the population that may be interested in cross-border audiovisual media services could range between 17.6 million (0.03% of the total EU population), which is the number of long-term and short-term migrants and travellers, and 108 million (21% of the total EU population), which is an estimate of the number of people with foreign language skills or interests. ⁸⁵
Sports rights owners	Demand from broadcasters is national, not pan-EU – evidence from RBB Economics and SROC members suggests there is no demand for pan-EU licences, as even when both national and pan-EU options are available the rights are acquired by territory/language.	Demand from broadcasters/distributors is at a national level, or in exceptional cases at a regional level (such as in Belgium). Sports rights owners can already offer rights at a pan-EU level, but there has been no demand from broadcasters/distributors for this. UEFA states that “Historically, in relation to the UEFA European Football Championship, UEFA has invited bids for rights on an individual or multi-territory basis (at the discretion of the bidder) in respect of UEFA’s member association territories. While this has identified certain markets separately, the option has always been made available for a bidder to combine territories in its bid. No pan-EU or pan-EU bids were ever received”. ⁸⁶ In addition, the Premier League states that “in relation to its rights for the 2010/11 to 2012/13 football seasons, the Premier League offered a package of pan-EU rights (excluding the UK and Ireland which were subject to specific commitments from the EC), for which it received no bids whatsoever. This contrasts with over 55 bids received for individual territories.” ⁸⁶ Furthermore, when EC examined the selling arrangements for audiovisual rights to the UEFA Champions League in 2003, it concluded that selling rights on a territorial exclusive basis increases the return to rights owners, and that the “practice also delivers benefits for both broadcasters and viewers”. ⁸⁷ In an Impact Assessment the EC stated that selling rights at a national level is due to the “deep-seated licensing practices of sports rights owners and/or from the commercial practices of services providers”. ⁸⁸ In the same document it went on to

KEY IMPACT

⁸⁵ *The economic potential of cross-border pay-to-view and listen audiovisual media services*, Plum Consulting, 2012.

⁸⁶ Response to Analysys Mason by the SROC.

⁸⁷ *The benefits of territorial exclusivity in the European audiovisual industry*, RBB Economics and Value Partners, February 2009, referring to Paragraph 176, COMP/C.2-37.398 – Joint selling of the commercial rights of the UEFA Champions League, July 2003.

⁸⁸ *Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council to ensure the cross-border portability of online content services in the internal market*, European Commission, Brussels, 9 December 2015.

Stakeholder	Cons	Evidence
		<p>describe how “on the contrary, non-premium content sports organisers often do not require territorial exclusivity”. This statement does not take into account the fact that demand for premium sports from consumers and broadcasters/distributors is typically at a national level.⁸⁹ For instance, RBB Economics commented in 2009 that “territorial exclusivity is critical to the practice of accommodating the different viewing preferences within the EU because it enables audiovisual products to be sold within Member States on an exclusive basis and in a way which meets demand in each Member State within the EU.”⁹⁰</p> <p>Popular sport programming varies across markets due to different tastes and interests at a national level. The SROC stated that “ice hockey is traditionally and culturally a Nordic/Arctic/Alpine sport and has little to no following in southern Europe. If rugby is considered as another example, whilst there is a core following/interest in Europe centred around the UK, Republic of Ireland, France and to a lesser extent Italy, there is little following outside of these countries.”⁹¹</p> <p>Furthermore, it does not seem reasonable to compare the “non-premium sports content” referred to by the EC above with the premium sports content which is so highly valued by consumers, rights owners and broadcasters/distributors. The EC’s Impact Assessment refers to the streaming of various sports by YouTube’s Sports Hub Channel as an example of non-premium sports content. The ‘views’ figure for a Sports Hub video is typically between 500 and 2000 for videos that have been hosted for at least six months.⁹² This represents extremely marginal demand, compared to the high level of demand from consumers for competitions such as Wimbledon, the Open Championship or the European Rugby Champions Cup.</p>

⁸⁹ Response to Analysys Mason by the SROC.

⁹⁰ *The benefits of territorial exclusivity in the European audiovisual industry*, RBB Economics and Value Partners, February 2009; see http://www.valuepartners.com/downloads/PDF_Comicati/Media%20e%20Eventi/2009/Value-Partners_RBBEconomics_report.pdf.

⁹¹ *Paper of SROC on the territoriality, cross-border access to content and portability issues*, SROC, May 2015.

⁹² See <https://www.youtube.com/user/thesportshubchannel>, accessed on 5 January 2016.

Stakeholder	Cons	Evidence
Sports rights owners and broadcasters/distributors	<p>Territorial licences are the result of freely chosen strategy and operational choices made in response to demand; with compulsory pan-EU licences these choices would be limited and the output inefficient – sports rights owners would lose the freedom to choose to sell rights to FTA or pay-TV operators in different territories. Evidence from SROC members (e.g. R&A⁹³) suggests that services are tailored to each market in response to local viewing habits/preferences and culture.</p>	<p>In certain territories, the objectives of sports rights owners may be best served by selling to a particular broadcaster/distributor. The implementation of pan-EU licensing would remove the freedom for sports rights owners and broadcasters/distributors to tailor their strategy on a territory-by-territory basis. For instance, pay-TV penetration is extremely high in the Netherlands (99%), Sweden (83%) and Poland (83%), while FTA remains the predominant viewing technology in Italy (only 30% pay-TV take-up) and Spain (only 29%);⁹⁴ sports rights owners have to adapt their selling strategy in these various territories accordingly.</p> <p>The ability of a rights owner to control its strategy on a territory-by-territory basis would be removed by the imposition of pan-EU licensing. As the R&A states, “broadcast rights have historically been licensed on both an FTA and pay-TV model, with the approach being determined largely by factors relevant to the specific territory, as well as The R&A’s overarching business objectives.”⁹⁵</p>
Sports rights owners	<p>Pan-EU licences are contrary to the territorial structure of the marketplace – evidence from SROC members and KEA⁹⁶ suggests that the introduction of a compulsory ‘one size fits all’ approach to a complex and fragmented commercial landscape that differs significantly by territory and language would run contrary to demand and would be detrimental to sports organisations (and in turn broadcasters/distributors and consumers).</p>	<p>The commercial demand for sports rights arising from each Member State is complex and fragmented. As UEFA has stated, “there is no single commercial landscape when it comes to the sale of and exploitation of UEFA’s media rights (in Europe)”.⁹⁵ As KEA stated in its 2010 report for the EC, “the audiovisual sector is a high-risk sector because media products are ‘experience’ goods, which are valued differently by each consumer as well as by different cultural communities. Because of the linguistic and cultural specificities across borders, the European audiovisual industry is structurally fragmented”.⁹⁶ This is particularly true for sports. As the SROC stated in 2011, “The main obstacle that SROC members face in terms of creation of a digital single market is the lack of a ‘digital single demand’”.⁹⁷</p> <p>Furthermore, sports rights owners such as UEFA have responsibilities beyond the monetisation of sports rights. A multinational sports rights owner has no dominant “home” market of the kind that exists for a domestic league; instead, it has direct</p>

⁹³ The R&A organises The Open, golf’s oldest and most international major championship in St Andrews, along with a number of other amateur and junior golf events.

⁹⁴ *International Communications Report 2015*, Ofcom, 2015.

⁹⁵ Response to Analysys Mason by the SROC.

⁹⁶ *Multi-Territory Licensing of Audiovisual Works in the European Union*, KEA, October 2010.

⁹⁷ *SROC Contribution to the DG INFSO Consultation: Online Distribution of Audiovisual Works in the European Union*, Sports Rights Owners Coalition, October 2011.

Stakeholder	Cons	Evidence
Sports rights owners	For owners of rights to national sports competitions, a reduction in revenue from outside their domestic market – forcing buyers to purchase less attractive packages would reduce the most important sources of revenue for European sports rights owners, as evidenced by SROC members.	obligations to its member associations to promote sport in each of their territories. Multinational sports rights owners cannot promote a policy or strategy position which favours one territory over any other(s). Pan-EU licensing could lead to multinational organisations such as UEFA selling rights to a broadcaster/distributor that might not serve consumers in all of its territories, which would reduce UEFA’s ability to meet its strategic and policy obligations to its member associations.
	KEY IMPACT	European football leagues license sports rights in their home territory and other Member States at different prices, reflecting the different levels of demand in these countries. ⁹⁸ The implementation of pan-EU licensing would lead to a loss of the incremental revenue to be gained from selling to broadcasters/distributors outside the home Member State. For example, “this season (2015–2016) the value of Premier League content in the UK is approximately £1 billion. In the 27 other Member States all together, it hardly reaches €150 million.” ⁹⁹ There is a similar situation in France, where the LFP states that “the value of French LFP media rights in France for the next cycle is EUR750m per season. In Europe, except France, it is around one tenth of its value in France.” ⁹⁹ In Spain, La Liga states “that the value of audiovisual rights in 2016/17, 2017/18 and 2018/19 is EUR3 billion. In the rest of the EU, the combined rights for 2016/17 and 2017/18 were worth EUR342 million.” ⁹⁹ This loss would be highly significant, as distribution is the most important source of revenue for European sports rights owners. In the 2013/14 season, broadcast revenue accounted for between 29% and 55% of total revenue in England, Germany, Spain, Italy and France. ^{99,100}
Broadcasters/ distributors	For pay-TV broadcasters which were unable to acquire the pan-EU rights (not just unsuccessful large media groups but also smaller broadcasters (particularly in small EU countries) which could not compete financially) there would be a loss of subscribers and revenue; and FTA broadcasters would lose core audience and revenue – theoretically,	Pan-EU licensing would mean that fewer pay-TV broadcasters/distributors were able to purchase valuable online content, as purchase of rights would be limited to a minimal number of pay-TV broadcasters/distributors, rather than a much larger group split by territory (if pan-EU licences were compulsory for online content services, in order to have exclusivity a broadcaster would need to acquire rights for the whole of the EU; there are only a limited number of media groups which could do so, and in order to enjoy exclusivity only one of those would acquire rights). Therefore, many
	KEY IMPACT	

⁹⁸ A Digital Single Market for content: “win-win”, or unintended consequences?, ACT, March 2015.

⁹⁹ Response to Analysys Mason by the SROC.

¹⁰⁰ Annual review of Football Finance, Deloitte, 2015; see <http://www2.deloitte.com/uk/en/pages/sports-business-group/articles/annual-review-of-football-finance.html>.

Stakeholder	Cons	Evidence
	pan-EU licensing would result in fewer operators being able to purchase valuable content, and thus many operators would not be able to offer subscribers what they wanted.	pay-TV broadcasters/operators would be unable to offer attractive online content to consumers, and would lose subscribers and revenue. In the case of FTA sports events, the same concept would apply, and specific advertising audiences and revenue associated with international markets (i.e. outside the home market) would be lost.
Broadcasters/ distributors <div data-bbox="201 534 443 603" style="background-color: #4a86e8; color: white; padding: 5px; text-align: center; font-weight: bold;">KEY IMPACT</div>	<p>In general, broadcasters/distributors would have to pay a higher fee for a pan-EU licence than for one covering just their domestic territory, and so they would incur an expense for territories in which they do not operate. In particular, small broadcasters/distributors would lose out as the cost of pan-EU rights would be beyond their means – it is unlikely that smaller players (and by extension all players in small countries) could compete to acquire any rights for content that was attractive in larger countries; evidence from RBB Economics and Value Partners suggests that the cost of rights at the EU level would be prohibitive for any small-country broadcaster/distributor.</p>	<p>For premium sports online content where there is very high demand from the domestic market and a very high price associated with the rights, it is unlikely that a broadcaster/distributor from a country other than the home territory would be able to purchase the rights.</p> <p>For example, the cost of purchasing the Premier League football rights in EU Member States for the 2013–2016 seasons was estimated to be between EUR5 million and EUR10 million in territories such as Hungary or Bulgaria, and between EUR15 million and EUR30 million in Russia, Germany and Turkey.¹⁰¹ In the UK, BT only won two of the seven packages on offer for 2013–2016 and paid GBP960 million (while Sky was reported to have paid GBP4.2 billion for the other five).¹⁰²</p> <p>The value of rights for the 2015/16 Premier League season alone is “approximately GBP1 billion”¹⁰³ (around EUR1.33 billion at current exchange rates¹⁰⁴). Out of the EU’s public broadcasting organisations, only ARD (Germany), BBC Group (UK), France Télévisions (France), RAI (Italy) and ZDF (Germany) had revenue in excess of EUR1.3 billion in 2014.¹⁰⁵ The purchase of Premier League rights for one season would account for 20% of ARD’s revenue. Out of Europe’s private TV companies funded by advertising, only ProSiebenSat (Germany), RTI (Italy), RTL (Germany), ITV (UK) and TF1 (France) had revenue in 2014 that exceeded the amount paid for Premier League rights.¹⁰⁵ The purchase of 2015/16 Premier League rights would have accounted for 46% of ProSiebenSat’s revenue in 2014.</p>

¹⁰¹ Revealed: Asia driving boom as Premier League foreign TV cash hits £2.23bn, Sporting Intelligence, 16 September 2013.

¹⁰² Premier League in record £5.14bn TV rights deal, 10 February 2015; see <http://www.bbc.com/news/business-31379128>.

¹⁰³ Response to Analysys Mason by the SROC.

¹⁰⁴ oanda.com exchange rates for January 2016.

¹⁰⁵ European Audiovisual Observatory, 2015 (in order of largest to smallest).

Stakeholder	Cons	Evidence
Broadcasters/ distributors	Historically, pan-EU audiovisual distributors have always had to create national operations in order to serve audiences satisfactorily, despite some earlier attempts to establish EU-wide operations – SROC evidence from previous attempts suggests that pan-EU offers were unsuccessful, with pay-TV operators developing national operations to meet demand from local/national audiences.	International channel brands such as MTV, Eurosport and Disney have developed national-specific channels to better serve consumer demand. For example, MTV initially offered MTV Europe as an English-language pan-EU channel, but more recently it has begun to offer localised versions of the MTV channel for its target territories in Europe (e.g. MTV Italia, MTV UK, MTV France). ¹⁰⁶ Advertising is also best exploited at a territorial level, as evidenced by Discovery Networks shutting down its pan-EU advertising sales team in 2008, due to “decreasing demand for pan-EU advertising”. ¹⁰⁶ Examples of this kind indicate how the development of pan-EU platforms to distribute live sports content would be likely to be a complex process for broadcasters/distributors, with a potentially unsatisfactory outcome for consumers.
Broadcasters/ distributors	Less diversity of sports content than when involving national broadcasters/distributors – theoretically, it is possible that broadcasters/distributors could have an incentive to focus on content that is more easily exploited across borders.	Online broadcasters/distributors have an inherently borderless audience, and may be more inclined to focus on profitability than encouraging cultural diversity. For instance, whilst Eurosport operates in 50 territories in Europe, it only produces content in 20 languages, ¹⁰⁷ although other multi-territory TV channels provide far fewer versions of their content than Eurosport. In contrast, national broadcasters serve all 28 EU countries in all their 24 national languages (and in many cases in regional languages too). The provisioning of similar diverse services would be at risk in the event of pan-EU licensing, and would most likely not be aligned with the commercial incentives of pan-EU players.
Broadcasters/ distributors	Distribution strategy differs according to sport and territory – evidence from the Association of Commercial Television in Europe (ACT) suggests that personalisation of services could be lost.	The ACT noted in 2014 that “Not only do national language, tastes and interests vary, but programme genres are key factors in determining value across markets. Sport – which viewers wish to watch live – raises different issues from a drama series or classic movie. Even within genres, different commercial factors will inform the distribution strategies of popular regional sports (ice-hockey, rugby, etc.) from those with global appeal. Distribution strategy will often be decided on a programme-by-programme basis. Initiatives such as ‘download and play’ or one-day subscription packages for sports channels are being trialled.” ¹⁰⁸

KEY IMPACT**KEY IMPACT****KEY IMPACT**

¹⁰⁶ *The benefits of territorial exclusivity in the European audiovisual industry*, RBB Economics and Value Partners, February 2009; see http://www.valuepartners.com/downloads/PDF_Comunicati/Media%20e%20Eventi/2009/Value-Partners_RBBEconomics_report.pdf.

¹⁰⁷ Eurosport Group Fact Sheet, Eurosport, March 2015.

¹⁰⁸ *Response to public consultation on the review of the EU copyright rules*, ACT, March 2014.

Stakeholder	Cons	Evidence
Broadcasters/ distributors	Costs would increase to serve cross-border operations – theoretical evidence from Plum Consulting suggests that costs could increase and that there would be no guarantee of financial viability.	The implementation of pan-EU licensing might thus lead to a reduction in regional and territorial personalisation of distribution strategy. A 2012 report by Plum Consulting and TNS Opinion for the EC concluded that “there are significant costs associated with the provision of cross-border audiovisual services, including rights costs, set up and operational costs, and the costs of doing business in other EU countries. Rights costs are a limiting factor for cross border services that include internationally premium content. Therefore, few cross border services would be viable and only a small proportion of willingness to pay identified (amongst the EU migrant market) would be economic to serve”. ¹⁰⁹
Broadcasters/ distributors or sports rights owners	Lower revenue from advertising which had a local focus, according to SROC members.	La Liga noted that “Also very important are the sponsoring and advertising partnerships which are national and/or local. Such partnerships would be negatively affected by a ban or restriction of territorial licences. The lack of resources generated by sponsoring and advertising partnerships would adversely impact sports clubs and professional competitions at regional and local levels.” ¹¹⁰

¹⁰⁹ *The economic potential of cross-border pay-to-view and listen audiovisual media services*, Plum Consulting, 2012.

¹¹⁰ *Position on geo-blocking, portability and cross-border access of sports content*, La Liga.

A.2.3 Uncertainties

In Figure A.6 below we present the uncertainties that may arise for consumers, sports rights owners and broadcasters/distributors from implementing compulsory pan-EU licences for online content rights.

Figure A.6: Uncertainties associated with implementing compulsory pan-EU licences for online content rights [Source: Analysys Mason, 2016]

Stakeholders	Uncertainties	Evidence
Consumers	<p>Prices may increase depending on where a consumer subscribes – evidence from RBB Economics and Bomsel and Rosay suggests significant differences in pricing across Europe. While if an average price was to be established across Europe some consumers would undoubtedly benefit, for others, pay-TV services would become unaffordable; there are clearly more economically viable markets for pay-TV operators in relation to which they would inevitably set their prices.</p>	<p>In theory, if prices were brought to an average across Europe, consumers living in Member States which have the most expensive audiovisual service packages might benefit from cost reductions. However, consumers living in Member States which have the least expensive audiovisual service packages might be subject to price increases.</p> <p>The pricing of audiovisual content services in Europe differs widely between countries, as do the business models that underpin this pricing (typically, the live dimension of sport makes it different from other audiovisual content). Pan-EU licensing could lead to higher prices for consumers, if broadcasters/distributors from outside their home territory purchased the pan-EU rights for online content.</p> <p>The fragmented pricing of audiovisual markets across Europe has been described in a number of reports. In a 2009 report, RBB Economics and Value Partners highlighted how there are broadly two models for pay TV in Europe. In the first, “a utility pay-TV package” in countries such as Germany and Sweden, consumers pay a smaller fee for a wide range of channels, whereas in the UK or Italy consumers have access to a premium pay-TV proposition, where the pay-TV operator acquires “a lot of premium content and offers significantly more choice than FTA platforms but charges higher prices”.</p> <p>When Bomsel and Rosay looked at the different consumption patterns in 17 EU Member States they highlighted large variations between the theoretical pricing points for different countries. For instance, “the price for cross-border access to media subscription services could theoretically be 75 times higher for Irish than Greek consumers”.¹¹¹</p>

KEY IMPACT

¹¹¹ *Why territories matter – vertical restraints and portability in audiovisual media services*, Olivier Bomsel and Camille Rosay, October 2013. Based on an initial estimate of the annual price required for a portability option by country. According to the same study, pay-TV prices effectively varied by a factor of around 6.

Stakeholders	Uncertainties	Evidence
Consumers <div style="background-color: #4a7ebb; color: white; padding: 5px; text-align: center; font-weight: bold;">KEY IMPACT</div>	<p>Inherent contradiction between national listed events and pan-EU licences – policy and regulation are imposed at a national level. The concept of events of national importance and the benefit of access to such events by the general public (for whom such events have specific resonance and importance) must be open to question – compulsory pan-EU licensing ignores both the existence of variations between countries regarding which events are considered of national importance <i>and</i> the negative effect on competition.</p>	<p>Current audiovisual policies/regulation are primarily national in EU Member States, despite some minimum common rules. The implementation of pan-EU licensing might introduce some complexity and uncertainty in this regard.</p> <p>In the UK, for example, Ofcom classifies a diverse group of events as Group A national listed events. These include both events which are recognised globally (such as the Olympic Games, the FIFA World Cup, European Football Championship, Rugby World Cup Finals and Wimbledon Tennis Finals), and events with specific domestic significance (such as the FA Cup Final, the Grand National, the Derby, the Rugby League Challenge Cup and the Scottish FA Cup Final).¹¹²</p> <p>As there is no harmonisation of these listed-events policies at EU level, if pan-EU licences for online services were made compulsory, there would be a negative impact across the EU for all events that were listed in any Member State, irrespective of their national importance (or otherwise).</p>
Consumers	<p>In theory, access to the online content services of a very large number of broadcasters/distributors, but in practice this seems unlikely – in principle, consumers could benefit from access to the content of the around 600 sports TV channels already available across the EU (according to the European Audiovisual Observatory's MAVISE database), but theoretical arguments (including from the SROC) suggest that these services would be unlikely to retain access to the rights if pan-EU licences were mandated. In any event, evidence suggests that only a small number of consumers (e.g. those with knowledge of multiple languages) would benefit from greater choice of TV channels.</p>	<p>The European Audiovisual Observatory (EAO) has identified around 600 sports channels in Europe (excluding channels that are not specifically sports-focused but also show sporting events, such as ITV1 in the UK).¹¹³ All these services could become available throughout the EU, assuming that they all had an online version, that they continued to exist and their rights/economics were not affected by the availability of pan-EU licences (which seems unlikely). This assumption seems only theoretical, as we understand that most of these sport TV channels have negotiated exclusive rights for a given country or territory and so would not be able to exist and broadcast in the same form if there was no longer territorial exclusivity.</p> <p>Moreover, a small number of consumers would be able to access sports content in another EU Member State. Only 2% of Internet users in the EU have tried to access any sports content through an online service in another EU Member State.¹¹⁴</p> <p>If other factors (e.g. price, availability) outweighed the importance to a consumer of accessing content in their own language, consumers could have more choice if single broadcasters were able to operate at pan-EU level (which is unlikely, for reasons of audiovisual rights management).</p>

¹¹² Code on Sports and Other Listed and Designated Events, Ofcom; see http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/ofcom_code_on_sport.pdf.

¹¹³ MAVISE database, European Audiovisual Observatory, extracted January 2016.

Stakeholders	Uncertainties	Evidence
Sports rights owners	<p>Theoretical transaction savings may be outweighed by revenue decline – theoretical evidence from CRA suggests there is no guarantee that lower transaction costs from pan-EU licensing would not be more than counter-balanced by loss of benefits (social welfare).</p>	<p>CRA's report for the EC concluded that there is no guarantee that potentially lower transaction costs from pan-EU licensing would not be more than counter-balanced by loss of benefits.¹¹⁵ The study highlighted that when “the licensing parties choose to license on a territory-by-territory basis, it is likely that there are some benefits to such a licensing model and these benefits may well be larger than the potential additional transaction costs”.</p>

¹¹⁴ Answers to Q13, *Flash Eurobarometer survey 411*, Conducted by TNS Opinion at the request of the European Commission, published August 2015.

¹¹⁵ *Economic Analysis of the Territoriality of the Making Available Right in the EU*, Charles River Associates for the EC, 2014.

A.3 Banning geo-blocking of online content services

A.3.1 Pros

In Figure A.7 below we present the advantages that may arise for consumers, sports rights owners and broadcasters/distributors from banning geo-blocking of online content services.

Figure A.7: Pros of banning geo-blocking of online content services [Source: Analysys Mason, 2016]

Stakeholder	Pros	Evidence
Consumers	Greater choice of broadcasters/distributors – in theory, consumers would be able to access sports content distribution services which were not available in their own Member State, although evidence suggests that only a small number of consumers might benefit.	A small number of consumers would be able to access the sports content that they have tried to access in another EU Member State. Only 2% of Internet users in the EU have tried (but failed) to access or download any sports content through an online service in another EU Member State. ¹¹⁶ If a broadcaster/distributor from another territory produced sport content in a consumer's own language (e.g. a user in German-speaking Switzerland could access German-language sports content), the consumer would have greater choice. If other factors (e.g. price, availability) outweighed the importance to a consumer of accessing content in their own language, they would have greater choice.
Consumers	Consumers would not have to make inappropriate use of VPNs in order to access content.	Consumers would no longer use technical 'workarounds' such as VPNs to access content that could not be found in their home territory.
Consumers	Only a small minority of consumers would benefit from a ban on geo-blocking – evidence from Plum Consulting suggests that the benefits to consumers of pay-TV providers making online content available would be likely to be marginal, as most consumers would not be prepared to pay for online sports content.	Among migrants within the EU there does not appear to be a significant willingness to pay for audiovisual content from another territory. As part of their report for the EC, Plum Consulting and TNS Opinion found that 50% of consumers would not be willing to pay EUR10 for "all of the channels and programmes you wish to watch from a particular country" – an option which few, if any, broadcasters/distributors would actually be able to provide. ¹¹⁷ The Plum Consulting report found that "about half of grey market subscribers would not be willing to pay EUR10 or more monthly

¹¹⁶ Answers to Q13, *Flash Eurobarometer survey 411*, Conducted by TNS Opinion at the request of the European Commission, published August 2015.

¹¹⁷ *The economic potential of cross-border pay-to-view and listen audiovisual media services*, Plum Consulting, 2012.

Stakeholder	Pros	Evidence
<p>Broadcasters/ distributors</p> <p>KEY IMPACT</p>	<p>Theoretically, without geo-blocking, broadcasters/distributors could have an enlarged market to serve. This argument is often used by the EC, especially when proposing initiatives to facilitate cross-border access.</p>	<p>for all of the channels and programmes (they) wish to watch from a particular country". It found that 50% of migrants interested in video from other countries would not be willing to pay a monthly subscription of EUR10 or more for "all of the channels and programmes (they) wish to watch from a particular country". "Of these, 22% (7% of the total sample) were already using foreign satellite packages ("grey market") to watch television from other EU countries".¹¹⁷</p> <p>In addition, Plum Consulting's telephone survey of non-migrants showed that "there is a low level of interest in television or video from other EU countries among those who do not currently watch it" and that "the data is inconclusive with regard to whether non-migrants who have fluency in other languages or who travel frequently would be willing to pay for television or video from other EU countries [...] that substantial proportion of the general population in some countries (e.g. Germany) are unwilling to pay for television or video from other EU countries".¹¹⁷</p> <p>The imposition of a ban on geo-blocking in conjunction with a ban on rights restrictions would allow pay-TV broadcasters/distributors to decide on commercial grounds whether or not to sell services to consumers who requested access to services outside their home territory – subject to the distributors having the necessary audiovisual content rights.</p> <p>When the EC opened its proceedings against Sky TV and several US film studios, it stated that "each of the six studios and Sky UK have bilaterally agreed to put in place contractual restrictions that prevent Sky UK from allowing EU consumers located elsewhere to access online pay-TV services available in the UK and Ireland. Without these restrictions, Sky UK would be free to decide on commercial grounds whether to sell its pay-TV services to such consumers requesting access to its services, taking into account the regulatory framework including, as regards online pay-TV services, the relevant national copyright laws."¹¹⁸ The EC identified clauses in licensing agreements between the six film studios and Sky UK where "provisions granting 'absolute territorial protection' ensure that the films licensed by the US studios are shown exclusively in the Member State where each broadcaster operates via satellite and the internet."¹¹⁸</p>

¹¹⁸ *Antitrust: Commission sends Statement of Objections on cross-border provision of pay-TV services available in UK and Ireland*, European Commission, Brussels, 23 July 2015.

A.3.2 Cons

In Figure A.8 below we present the disadvantages that may arise for consumers, sports rights owners and broadcasters/distributors from banning geo-blocking of online content services.

Figure A.8: Cons of banning geo-blocking of online content services [Source: Analysys Mason, 2016]

Stakeholder	Cons	Evidence
Consumers, broadcasters/distributors and sports rights owners	Consumers, broadcasters/distributors and sports rights owners would face many of the same disadvantages associated with implementation of compulsory pan-EU licensing or permitting passive sales of online content services.	<p>According to SROC members, a ban on the geo-blocking of online content services would lead to the same outcome for consumers as the implementation of compulsory pan-EU licensing or permitting passive sales: for rights owners, all three scenarios would be akin to <i>de-facto</i> cross-border access.</p> <p>A ban on geo-blocking would mean that, given the risk of price arbitrage, sports rights owners would have to sell and broadcasters/distributors would have to purchase the rights for all 28 territories (akin to a pan-EU licensing scenario), or that online rights would either be restricted in availability or not granted at all.</p>
Consumers	<p>Significantly less personalisation of sports content (in the form of local celebrities, languages, video streams, camera angles, interviews with specific players, highlights, etc.) and fewer free offers in “dark territories”¹¹⁹ – evidence from SROC members shows that sports content is currently highly diverse and personalised to reflect audience tastes, culture and language.</p>	<p>Consumers currently benefit from agreements between broadcasters/distributors and rights owners for sports services to be tailored to the target market of the broadcasters/distributors. A pan-EU broadcaster/distributor might not be able to personalise programming in many languages, which is a particularly important element in maximising consumer enjoyment of sports content.</p> <p>Most European sports channels are personalised at a national level, as is most sports content. Personalisation encompasses a wide package of benefits for consumers, not just the use of local language. Before a sports match starts, personalised transmission involves audience-specific programme hosts and guests (e.g. well known ex-players/managers or journalists). Then during transmission of the content, there is a focus on particular players (e.g. through the use of different camera angles), and after the game it is possible to tailor the choice of interviewee for post-game interviews and at press conferences.</p> <p>The R&A has stated that “several broadcasters receive bespoke unilateral feeds in</p>

KEY IMPACT

¹¹⁹ ‘Dark territories’ are territories where the content rights for a sport are not sold due to insufficient demand for the content from consumers and broadcasters/distributors. The rights to ECB cricket content outside of the UK provide a good example of this: consumers in the dark territories for ECB cricket are able to access this content online, free of charge.

Stakeholder	Cons	Evidence
<p>Consumers</p> <p>KEY IMPACT</p>	<p>Reduction in content diversity and higher prices – according to SROC members, rights owners might have to stop selling rights outside of their home market, in order to protect their revenue in that home market.</p>	<p>addition to the generic world feed, and this is complemented by the on-site presence of certain broadcasters during the Open Championship week. Given the multinational field that takes part in the Open, broadcasters naturally want to have a particular focus on golfers relevant to their local market(s)".¹²⁰ In addition, each broadcaster at UEFA events "has access to unilateral broadcast services (e.g. extra cameras, interviews, presentation) on-site at their relevant match in order to produce additional content unique to themselves".¹²⁰ Furthermore, the FFT stated that "our broadcasters throughout Europe customize our worldfeed (ISS) with their own commentary in their own language. Some also ask for specific unilaterals, specific feeds depending on "their players' matches", as nationalities of the players are key to our broadcasters' contents".¹²⁰</p> <p>The rights for sports events are typically packaged and sold with language personalisation – for instance, the R&A notes that "due to the importance to consumers of ensuring content is suitably localised, multilingual territories such as Switzerland and Belgium are carved up and licensed predominantly on the basis of the differing local languages".¹²⁰ There are 24 official recognised languages in the EU.¹²¹ MotoGP content is transmitted in 29 different languages in Europe.¹²⁰ Bundesliga content is personalised by broadcasters which cover 35 countries and 19 languages in Europe.¹²⁰ FFT content is distributed in 16 languages in Europe.¹²⁰ Ligue 1 content is distributed by 22 different licensees in over 25 countries in Europe (not including TV5 Monde's pan-regional rights).¹²⁰ Eurosport personalises its content by distributing it in 20 languages.¹²² La Liga content is personalised by language at a regional level in Spain (into Catalan, Valenciano, Euskerra and Galician).¹²⁰</p> <p>Domestic rights owners might have to stop selling rights outside of their home market, in order to protect their revenue in that home market. One SROC member stated that "if we cannot provide our licensees on our main market with exclusive rights (i.e. if there is a risk customers subscribe to other services elsewhere) the logical answer would be to stop selling outside the home market".¹²⁰ This would be detrimental to consumers in other territories, who would face less choice, higher</p>

¹²⁰ Response to Analysys Mason by the SROC.

¹²¹ See http://ec.europa.eu/languages/policy/linguistic-diversity/official-languages-eu_en.htm.

¹²² Eurosport Group Fact Sheet, Eurosport, March 2015.

Stakeholder	Cons	Evidence
Sports rights owners	<p>Likely loss of revenue due to some major sports rights owners withdrawing EU rights in response to the European arbitrage risks that threaten the value of their most important domestic rights – based on evidence from SROC members there seems to be a clear risk of loss of revenue for sports rights owners, due to the</p>	<p>prices (as they would have to subscribe to a service in a territory where it was more valuable and likely to be more expensive) and content that was not tailored to their language/tastes. In addition, rights owners might no longer be able to sell content to FTA broadcasters/distributors that had online services, because this would dilute the value of the content for any other broadcaster/distributor (as consumers could access the content online, free of charge).</p> <p>International rights owners, particularly those subject to listed-events legislation, might have little choice but to stop licensing online rights.</p> <p>The broadcasting of cricket further demonstrates this potential disadvantage of a ban on geo-blocking. The England and Wales Cricket Board (ECB) sells exclusive rights to Sky in the UK, where cricket’s popularity means it can command large audiences. However, outside the UK, where cricket has minimal popularity, the ECB and Sky UK have launched a special Internet streaming service that allows residents of other Member States to discover the sport free of charge.¹²³ If the website was not geo-blocked, it would become available to UK citizens, thus severely diluting the value of Sky UK’s investment in the UK market. As a consequence, Sky UK and the ECB would have to stop providing the free service to consumers outside the UK.¹²⁴</p> <p>There are seven EU Member States that do not currently have a broadcaster partner for European golf (Croatia, Cyprus, Greece, Hungary, Luxembourg, Romania and Slovenia). The European Tour has therefore invested in its own free streaming service to ensure that golf fans in these countries are able to access coverage of the sport. This service relies on the ability to limit streaming of content into these seven countries without infringing the rights sold to the other 21 Member States. Without the ability to impose geo-blocking, this free streaming service could not be provided.</p>
<p>KEY IMPACT</p>		<p>If consumers were able to take advantage of price differences between broadcasters/distributors in different territories, this would have a negative effect on broadcaster/distributor revenue, which would in turn affect the price they were willing to pay to rights owners for content. For many sports rights owners, the value of rights in a territory for their pay-TV broadcaster is based on how many subscribers there are in that territory, and so a reduction in the number of consumers due to arbitrage</p>

¹²³ See <http://skycricketticket.com>.

¹²⁴ Response to Analysys Mason by the SROC.

Stakeholder	Cons	Evidence
	<p>potential loss of revenue for broadcasters/distributors as a result of price arbitrage. The response of sports rights owners might depend on the composition of their revenue, in terms of EU vs. domestic. In some cases, EU sales are relatively small compared to domestic ones, and rights owners might prefer not to sell their rights at a low value. Where there was no option to sell online rights to just one broadcaster, the rights owners might need to withhold online rights altogether.</p>	<p>or otherwise would lead the broadcaster to pay less to the rights owners.</p> <p>Furthermore, domestic sports rights owners would suffer further loss of revenue if sales to markets outside their home territory were stopped out of fear that arbitrage would devalue the rights for home territory broadcasters/distributors. For instance, it is estimated that the revenue the Premier League earned when it sold sports rights to broadcasters in Europe outside the UK amounted to EUR690 million for 2013–2016, out of a total of more than GBP5.1 billion (i.e. less than 10% of the total revenue it raised).¹²⁵ Similarly, the value of La Liga rights in 2016/17, 2017/18 and 2018/19 in Spain was EUR3 billion – whereas for the rest of Europe the rights were worth EUR342 million for 2016/17 and 2017/18 (i.e. about 10% of the total revenue it raised).¹²⁶</p> <p>The potential for price arbitrage would depend on distributors' pricing and demand across Europe, with high-income European countries (where prices are often higher than in the rest of the EU) being worse off in terms of the threat to their domestic revenue.</p> <p>Moreover, price arbitrage could potentially have a much greater impact on online pay-TV service business models than on those of satellite TV operators. It is much easier for a consumer to access an online pay-TV service than to subscribe to a foreign satellite service (which requires a set-top box and a satellite dish).</p>
<p>Sports rights owners</p> <p>KEY IMPACT</p>	<p>Reduced circulation of content in Member States where there was marginal demand for sports content – as evidenced by SROC members, sports rights owners would not be able to provide free or on-demand services to increase circulation in Member States where demand was marginal, as this would dilute the value of the product purchased by broadcasters/distributors in territories where demand was high.</p>	<p>A ban on geo-blocking would require removal of any service designed to give consumers in territories where demand for a particular sport is marginal an opportunity to discover that sport, as it would dilute the value of content sold to broadcasters/distributors in territories where demand is high. There are various examples of such services:</p> <ul style="list-style-type: none"> • Rights to transmit the World Basketball Championship are sold in a number of Member States, where basketball is very popular (e.g. Spain, Greece, Balkans, Baltic States). In territories where demand for basketball is marginal, an online streaming service is available on a pay-per-view basis, to enable citizens to discover the sport. • The Football Leagues of Finland and Sweden receive minimal demand from

¹²⁵ Revealed: Asia driving boom as Premier League foreign TV cash hits £2.23bn, Sporting Intelligence, 16 September 2013.

¹²⁶ Response to Analysys Mason by the SROC.

Stakeholder	Cons	Evidence
<p>Broadcasters/ distributors</p> <p>KEY IMPACT</p>	<p>A loss of subscribers/revenue for pay-TV broadcasters and a loss of non-core audience and revenue for FTA broadcasters due to opportunities for price arbitrage – evidence from Bomsel and Rosay illustrates the strong incentives for, and high risk of, price arbitrage by consumers between broadcasters/distributors in different territories.</p>	<p>broadcasters outside these countries for their content. In order that consumers outside of Finland and Sweden can be served, both leagues make content available online on a pay-per-view basis.</p> <ul style="list-style-type: none"> The England and Wales Cricket Board currently makes its content available to stream free of charge in Member States outside the UK, in order for expats and citizens located outside the UK to discover the sport. <p>There is currently a significant imbalance in prices for audiovisual services between EU Member States. A ban on geo-blocking might mean that some broadcasters/distributors began to lose a significant portion of consumers to broadcasters/distributors from other Member States that could offer cheaper services.</p> <p>The average spend on pay TV and subscription video on demand (SVOD) varies widely between countries. Bomsel and Rosay’s 2013 report calculated the average annual spend per capita for 17 EU Member States. This average was three times what Greeks spent, and less than half of what Danish people spent.¹²⁷ Whilst the study focused on portability, some of its conclusions regarding price imbalances within Europe can also be applied to a scenario where geo-blocking is banned. Bomsel and Rosay stated that “were a pan-EU portability option to be offered, it would create significant imbalances in the European market: consumers valuing portability would have an interest in buying it where the video service subscriptions were the cheapest. This may stimulate new kinds of grey markets”.¹²⁷</p>
<p>Broadcasters/ distributors</p> <p>KEY IMPACT</p>	<p>The value of content could be diluted and investments in personalisation put at risk – pay-TV broadcasters/distributors have questioned whether FTA broadcasters/distributors should grant viewers access their content that is not geo-blocked, and for which pay-TV broadcasters have also purchased the rights.</p>	<p>Theoretically, if a broadcaster/distributor purchased exclusive rights to content in one territory which was then made available on non-geo-blocked FTA online services from other territories, the value of its content would be diluted by the inherent reduction in actual exclusivity, since the licensed broadcaster would cease to be the only broadcaster able to offer the content to the audience in its territory. The impact of this reduction/removal of exclusivity would be more substantial for pay TV if FTA channels from other Member States were to be made available.</p>

¹²⁷ *Why territories matter – vertical restraints and portability in audiovisual media services*, Olivier Bomsel and Camille Rosay, October 2013.

Stakeholder	Cons	Evidence
Broadcasters/ distributors <div data-bbox="188 363 432 427" style="background-color: #4a7ebb; color: white; padding: 5px; text-align: center; font-weight: bold;">KEY IMPACT</div>	<p>Small broadcasters/distributors would lose out as the cost of pan-EU rights would be beyond their means – it is unlikely that smaller players (and by extension all players in small countries) could obtain any exclusive rights for content that was attractive in larger countries; theoretical evidence based on the value of rights suggests that the cost of rights at the EU level would be prohibitive for any small-country broadcaster/distributor.</p>	<p>For premium sports online content where there is very high demand from the domestic market and a very high price associated with the rights, it is unlikely that a broadcaster/distributor from a country other than the home territory would be able to purchase the rights (if territorial exclusivity was maintained).</p> <p>For example, the cost of purchasing the Premier League football rights in EU Member States for the 2013–2016 seasons was estimated to be between EUR5 million and EUR10 million in territories such as Hungary or Bulgaria, and between EUR15 million and EUR30 million in Russia, Germany and Turkey.¹²⁸ Within the UK, BT only won two of the seven packages on offer for 2013–2016 and paid GBP960 million (while Sky was reported to have paid GBP4.2 billion for the other five).¹²⁹</p> <p>The value of rights for the 2015–16 Premier League season alone are “approximately GBP1 billion”¹³⁰ (around EUR1.33 billion at current exchange rates¹³¹). Out of the EU’s public broadcasting organisations, only ARD (Germany), BBC Group (UK), France Télévisions (France), RAI (Italy) and ZDF (Germany) had revenue in excess of EUR1.3 billion in 2014.¹³² The purchase of Premier League rights for one season would account for 20% of ARD’s revenue. Out of Europe’s private TV companies funded by advertising, only ProSiebenSat (Germany), RTI (Italy), RTL (Germany), ITV (UK) and TF1 (France) had revenue in 2014 that exceeded the amount paid for Premier League rights.¹⁰⁵ The purchase of 2015–16 Premier League rights would have accounted for 46% of ProSiebenSat’s revenue in 2014.</p>

¹²⁸ Revealed: Asia driving boom as Premier League foreign TV cash hits £2.23bn, Sporting Intelligence, 16 September 2013.

¹²⁹ Premier League in record £5.14bn TV rights deal, 10 February 2015; see <http://www.bbc.com/news/business-31379128>.

¹³⁰ Response to Analysys Mason by the SROC.

¹³¹ oanda.com exchange rates for January 2016.

¹³² European Audiovisual Observatory, 2015 (in order of largest to smallest).

Stakeholder	Cons	Evidence
Broadcasters/ distributors	Less diversity of sports content than when involving national broadcasters/distributors – possible incentive for online broadcasters/distributors to focus on content that was more easily exploited across borders.	Online broadcasters/distributors have an intrinsically borderless delivery platform, and might be more inclined to focus on profitability than encouraging cultural diversity. For instance, whilst Eurosport operates in 50 territories in Europe, it only produces content in 20 languages. ¹³³ In contrast, national broadcasters serve all 28 EU countries in all their 24 national languages (and in many cases in regional languages too). The provision of similarly diverse services would be at risk as a result of a ban on geo-blocking, and would most likely not be aligned with the commercial incentives of a pan-EU operator.

¹³³ Eurosport Group Fact Sheet, Eurosport, March 2015.

A.3.3 Uncertainties

In Figure A.9 below we present the uncertainties that may arise for consumers, sports rights owners and broadcasters/distributors of banning geo-blocking of online content services.

Figure A.9: Uncertainties associated with banning geo-blocking of online content services [Source: Analysys Mason, 2016]

Stakeholders	Uncertainties	Evidence
Consumers KEY IMPACT	Prices may increase, depending on where a consumer subscribes – evidence from RBB Economics and Bomsel and Rosay suggests significant differences in pricing across Europe. The establishment of an average price across Europe would benefit some consumers but make services unaffordable for others.	<p>In theory, if prices were brought to an average across Europe, consumers living in Member States which had the most expensive audiovisual service packages might benefit from cost reductions. However, consumers living in Member States which had the least expensive audiovisual service packages could be subject to price increases.</p> <p>The pricing of audiovisual content in Europe differs widely between countries, as does the business model that underlies this pricing. Pan-EU licensing might lead to higher prices for consumers, if broadcasters/distributors from outside their home territory purchased the pan-EU rights for online content.</p> <p>The fragmented pricing of audiovisual markets Europe has been described in a number of reports. In a 2009 report, RBB Economics and Value Partners highlighted how there are broadly two models for pay TV in Europe. In the first, “a utility pay-TV package” in countries such as Germany and Sweden, consumers pay a smaller fee for a wide range of channels, whereas in the UK or Italy consumers have access to a premium pay-TV proposition, where the pay-TV operator acquires “a lot of premium content and offers significantly more choice than FTA platforms but charges higher prices”.</p> <p>When Bomsel and Rosay looked at the different consumption patterns in 17 EU Member States they highlighted the large variations between the theoretical pricing points for different countries. For instance, “the price for cross-border access to media subscription services could theoretically be 75 times higher for Irish than Greek consumers”.</p>
National listed events KEY IMPACT	Incoherence of geo-blocking with listed events – there is uncertainty over how content that is a national listed event in one country yet valuable in another would be treated.	<p>The concept of events of national importance and the benefit of access to such events by the general public (for whom such events have specific resonance and importance) must be open to question – compulsory pan-EU licensing ignores both the existence of variations between countries regarding which events are considered of national importance <i>and</i> the negative effect on competition for rights acquisition.</p>

A.4 Permitting passive sales of online content services

A.4.1 Pros

In Figure A.10 below we present the advantages that may arise for consumers, sports rights owners and broadcasters/distributors from permitting passive sales of online content services.

Figure A.10: Pros of permitting passive sales of online content services [Source: Analysys Mason, 2016]

Stakeholder	Pros	Evidence
Consumers KEY IMPACT	Theoretically, a greater choice of distributors, but only for a relatively small proportion of consumers who know how/where to find them and have the language capability – subject to changes from sports rights owners and broadcasters/distributors which might reduce the services offered online (as mentioned by SROC members). The incremental demand from second-language speakers may be somewhat limited, however. Plum Consulting has previously highlighted how only a small proportion of EU citizens (an estimated 7%) are proficient in a second EU language. This limits the number of consumers who could enjoy more content and lower prices for content in a second language.	Consumers who are aware that the content they wish to access is available online from a broadcaster/distributor in another country will be able to access it. The choice for those consumers who are aware would in fact increase significantly if the concept of passive sales were extended to all online services. It is much easier for a consumer to access an online service than to subscribe to a foreign satellite service (which requires a set-top box and a satellite dish). More consumers could therefore take advantage of an extension of passive sales to online content services. Consumers might also be able to find content at lower prices than those currently charged in their home territory. Consumers who are able to understand a language/languages used in other Member States would benefit from having access to a wider range of content. In 2012, Plum Consulting estimated that there are 48 million adults in the EU (7% of the total population) who are proficient in a second EU language. ¹³⁴
Sports rights owners KEY IMPACT	Passive sales could in theory facilitate the availability of sports content (for those sports rights owners whose content was not licensed in every EU Member State), in any countries where there was no licensed broadcaster, although this demand appears very small (based on data in reports from Plum Consulting in 2012 and the EC Eurobarometer). However, evidence provided by sports rights owners shows that the way sport	Passive sales of online services might marginally increase the circulation of and audience for content released by certain rights owners which were/were not able to license rights in every EU Member State, by allowing a greater number of consumers, from a more diverse selection of territories, to access it online. However, the number of incremental subscribing viewers is likely to be marginal: in 2012 Plum Consulting estimated that there were 48 million adults in the EU (7% of the total population) with proficiency in a second EU language.

¹³⁴ The economic potential of cross-border pay-to-view and listen audiovisual media services, Plum Consulting, 2012.

Stakeholder	Pros	Evidence
	<p>content is distributed would change if passive sales were imposed on them and their licensees. The rationale for offering free coverage in “dark territories” would also disappear.</p>	<p>This benefit excludes the potential for larger audiences that could arise as a result of price arbitrage. However, if price arbitrage existed or was perceived to exist, sports rights owners and broadcasters/distributors would react and reduce output accordingly.</p>

A.4.3 Cons

In Figure A.11 below we present the disadvantages that may arise for consumers, sports rights owners and broadcasters/distributors from permitting passive sales of online content services.

Figure A.11: Cons of permitting passive sales of online content services [Source: Analysys Mason, 2016]

Stakeholder	Cons	Evidence
Consumers KEY IMPACT	European consumers are satisfied with their current content offering – according to the EC only 2% of European viewers are interested in cross-border access to Europe-wide sports content; this seems very low compared to the large majority of 93% of Europeans who are satisfied with the current offering, including services personalised by culture and language.	According to the EC, the vast majority of users are satisfied with accessing content available in their Member State. Only 2% of Internet users in the EU have tried to access any sports content through an online service in another EU Member State. ¹³⁵ 93% of users looking to access sports content on the Internet in their country stated that they were able to find what they were looking for. ¹³⁶
Consumers KEY IMPACT	Less availability of tailored content online for both FTA and pay TV because of the strategies of some key sports rights owners (adopted as a consequence of the EC legislation) – theoretical evidence from SROC members suggests there would be less availability of content, and potentially higher prices, for most consumers, because sports rights owners would need to maintain the value of their content by granting pan-EU licences (which would then reduce the number of potential broadcasters/distributors), or not licensing rights on the Internet at all.	Domestic rights owners might have to stop selling rights outside their home market, in order to protect their revenue in that home market. One SROC member stated that “if we cannot provide our licensees on our main market with exclusive rights (i.e. if there is a risk customers subscribe to other services elsewhere) the logical answer would be to stop selling outside the home market”. ¹³⁷ This would be detrimental to consumers in other territories, who would face less choice, higher prices (as they would have to subscribe to a service in a territory where it was more valuable and likely to be more expensive) and content that was not tailored to their language/tastes. International rights owners, particularly those subject to listed-events legislation, might not have the same options and might need to consider whether to restrict available online rights or even not license them at all. In addition, assuming “passive sales” were possible, and their application to FTA was relevant, rights owners might no longer be able to sell content to FTA

¹³⁵ Answers to Q13, *Flash Eurobarometer survey 411*, conducted by TNS Opinion at the request of the European Commission, published August 2015.

¹³⁶ *Flash Eurobarometer survey 411*, Conducted by TNS Opinion at the request of the European Commission, published August 2015.

¹³⁷ Response to Analysys Mason by the SROC.

Stakeholder	Cons	Evidence
Consumers <div style="background-color: #4a86e8; color: white; padding: 5px; text-align: center; font-weight: bold;">KEY IMPACT</div>	<p>Less availability of free offers which are currently provided by sports rights owners in territories where there is no commercial demand from broadcasters/consumers (“dark territories”) – theoretical evidence from SROC members suggests there could be some changes to their current practice of providing sports rights free of charge in dark territories, in order to meet the demand from a small number of consumers in those countries, and hopefully introduce more people to those sports. SROC members have indicated that this practice would be stopped, which would be detrimental to consumers who currently enjoy this content.</p>	<p>broadcasters/distributors for use in online services, because this would dilute the exclusivity and value of the content for all other broadcasters/distributors (as consumers might be able to access the content online, free of charge).</p> <p>Some sports content is made available in dark territories in order to meet the demand from a small number of consumers in the country, and hopefully introduce more people to those sports. For example:</p> <ul style="list-style-type: none"> • The broadcasting of cricket in the UK and in Europe further demonstrates this potential disadvantage of permitting passive sales. The England and Wales Cricket Board (ECB) sells exclusive rights to Sky in the UK, where cricket’s popularity means it can attract large audiences. However, outside the UK, where cricket has minimal popularity, the ECB and Sky UK have launched a special Internet streaming service for free that allows residents of other Member States to discover the sport.¹³⁸ • Similarly, there are seven EU Member States that do not currently have a broadcaster partner for European golf (Croatia, Cyprus, Greece, Hungary, Luxembourg, Romania and Slovenia). The European Tour has therefore invested in its own free streaming service to ensure that golf fans in these countries can access coverage of the sport. This service relies on the ability to limit streaming of content into these seven countries without infringing the rights sold to the other 21 Member States. <p>SROC members have indicated that this practice would be stopped if passive sales of online sports content were permitted, which would be detrimental to consumers who currently enjoy this content.</p>
Consumers	<p>Only a small minority of consumers would benefit from passive sales – evidence from Plum Consulting suggests that the benefits to consumers of pay-TV providers making content available online would be likely to be marginal, as most consumers would not be prepared to pay for online sports content.</p>	<p>Among migrants within the EU there does not appear to be a significant willingness to pay for audiovisual content from another territory. As part of their report for the EC, Plum Consulting and TNS Opinion found that 50% of consumers would not be willing to pay EUR10 for “all of the channels and programmes you wish to watch from a particular country” – an option which few, if any, broadcasters/distributors would actually be able to provide.¹³⁴ The Plum Consulting report found that “about half of grey market subscribers would not be willing to pay EUR10 or more monthly for all of the channels and</p>

¹³⁸ See <http://skycricketticket.com>.

Stakeholder	Cons	Evidence
Consumers	<p>Focus on return on investment would most likely mean less personalisation and diversity of EU content – the increased cost to broadcasters/distributors of content that was attractive to multiple markets (such as the Olympic Games) could reduce their ability to invest in diversity and personalisation for smaller territories.</p>	<p>programmes (they) wish to watch from a particular country”. It found that 50% of migrants interested in video from other countries would not be willing to pay a monthly subscription of EUR10 or more for “all of the channels and programmes (they) wish to watch from a particular country”. “Of these, 22% (7% of the total sample) were already using foreign satellite packages (“grey market”) to watch television from other EU countries”.¹³⁴</p> <p>In addition, Plum Consulting’s telephone survey of non-migrants showed that “there is a low level of interest in television or video from other EU countries among those who do not currently watch it” and that “the data is inconclusive with regard to whether non-migrants who have fluency in other languages or who travel frequently would be willing to pay for television or video from other EU countries [...] that substantial proportion of the general population in some countries (e.g. Germany) are unwilling to pay for television or video from other EU countries”.¹³⁴</p> <p>Securing exclusive premium sports content that is attractive across multiple countries would become more important if passive sales were permitted, with a potential rise in costs for the acquisition of this content when compared to acquisition for one market. This might have an impact on “diversity and plurality”, if rising costs resulted in broadcasters/ distributors focusing on content that provided the most efficient return on investment.</p> <p>For example, in 2015 Discovery (the owner of multi-territory European broadcaster/distributor Eurosport) purchased the exclusive rights across Europe on every platform to broadcast the Olympic Games between 2018 and 2024.^{139,140} The costs associated with personalising content for each EU territory would be very high for Discovery, while Discovery’s strategy might be to focus on reaching the largest audience for the lowest cost, which could mean that</p>

¹³⁹ *Discovery pays EUR1.3bn for rights to Olympics in Europe*, Financial Times, 29 June 2015; see <http://www.ft.com/cms/s/0/8e6c4798-1e57-11e5-ab0f-6bb9974f25d0.html#axzz3wwDdAbPL>.

¹⁴⁰ *BBC dealt another blow after losing control of TV rights for Olympics*, The Guardian, 29 June 2015; see <http://www.theguardian.com/sport/2015/jun/29/bbc-loses-control-olympic-tv-rights-discovery-eurosport>.

Stakeholder	Cons	Evidence
<p>Sports rights owners</p> <p>KEY IMPACT</p>	<p>National sports rights owners would be likely to lose revenue. Either their content would no longer be exclusive and would lose value (due to possible arbitrage between the various national offerings) or rights owners would focus on the most important market(s) (very often the national one) and not license in other territories, in which case they would also lose revenue – based on evidence from SROC members, international sports rights owners without a domestic market might have to stop licensing Internet rights, due to the impact on the value of their core media rights of the cross-border access created by permitting passive sales.</p>	<p>some consumers would lose out as their specific needs would not be addressed. This can be seen in other areas – for example La Liga’s YouTube highlights are available in Belgium, Greece, Hungary, Ireland, Italy, the Netherlands, Portugal, Slovakia, Slovenia and the UK, but only in English and Spanish.¹⁴¹</p> <p>SROC members also highlighted that there could be less availability of the free offers provided by sports rights owners in territories where there is no commercial demand from broadcasters (e.g. cricket in Belgium or golf in Romania).</p> <p>If consumers could take advantage of price differences between broadcasters/distributors in different territories, this would have a negative effect on broadcaster/distributor revenue, which would in turn affect the price they were willing to pay to rights owners for content. For many sports rights owners, the value of rights in a territory for their pay-TV broadcaster is based on how many subscribers there are in that territory, and so a reduction in the number of consumers due to arbitrage or otherwise would lead the broadcaster to pay less to the rights owners.</p> <p>Furthermore, domestic sports rights owners would suffer further loss of revenue if sales to markets outside their home territory were stopped out of fear that arbitrage would devalue the rights for home territory broadcasters/distributors. Sports rights owners are therefore driven into <i>de facto</i> pan-EU licensing. For instance, it is estimated that the revenue the Premier League earned when it sold sports rights to broadcasters in Europe outside the UK amounted to EUR690 million for 2013–2016, out of a total of more than GBP5.1 billion (i.e. less than 10% of the total revenue it raised).¹⁴² Similarly, the value of La Liga rights in 2016/17, 2017/18 and 2018/19 in Spain was EUR3 billion – whereas for the rest of Europe they were worth EUR342 million for 2016/17 and 2017/18 (i.e. about 10% of the total revenue it raised).¹⁴¹</p> <p>The potential for price arbitrage would depend on distributors’ pricing and demand across Europe, with high-income countries (where prices are often higher than in the rest of the EU) being worse off in terms of the threat to their domestic revenue.</p>

¹⁴¹ Response to Analysys Mason by the SROC.

¹⁴² *Revealed: Asia driving boom as Premier League foreign TV cash hits £2.23bn*, Sporting Intelligence, 16 September 2013.

Stakeholder	Cons	Evidence
Sports rights owners	Reduction in competitive intensity during tender processes – rights are usually sold through competitive tender processes in each country. The timing of these tenders is not usually concurrent.	Moreover, price arbitrage could potentially have a much greater impact on online pay-TV service business models than on those of satellite TV operators. It is much easier for a consumer to access an online pay-TV service than to subscribe to a foreign satellite service (which requires a set-top box and a satellite dish).
KEY IMPACT		Theoretically, broadcasters/distributors might feel that there was less need to compete in each country where they operated because they could rely on “passive sales” for those countries in which they failed to acquire rights, particularly where their operating territories shared common languages. This would have a material impact on sports rights owners whose rights currently attract demand and competition among broadcasters in every country.
Broadcasters/ distributors	There could be a loss of revenue to broadcasters/distributors due to significant opportunities for price arbitrage across the EU, given the current pay-TV price differential (an approximately six-fold difference between the lowest and highest prices in the EU17) – evidence from Bomsel and Rosay suggests significant price differences for pay-TV packages between countries and thus an opportunity for arbitrage, which might lead to broadcasters/distributors losing subscribers as consumers begin to access online content services from cheaper broadcasters/distributors elsewhere in the EU.	There is currently a significant price imbalance for audiovisual services between EU Member States (linked to various cultural demands and differences in household purchasing power, for instance). The extension of passive sales to the Internet may mean that some broadcasters/distributors begin to lose a significant proportion of their consumers to broadcasters/distributors from other Member States which are able to offer cheaper services. This is because online distribution would make the impact of passive sales greater than satellite distribution, as the barriers to arbitrage would be lower, and there would be a larger audience which could potentially benefit from this arbitrage. The average spend on pay TV and SVOD varies widely between countries. Bomsel and Rosay’s 2013 report calculated the average annual spend per capita for 17 EU Member States. This average was three times what Greeks spent, and less than half of what Danish people spent (this would mean an arbitrage opportunity of 600% between the lowest price (in Greece) and the highest price (Denmark)). ¹⁴³ Whilst the study focused on portability, some of its conclusions regarding price imbalances within Europe can also be applied to a scenario where online passive sales are permitted. Bomsel and Rosay stated that “were a pan-EU portability option to be offered, it would create significant imbalances in the European market: consumers valuing portability would have an interest in buying it where the video service subscriptions were the cheapest. This may stimulate new kinds of grey markets.” ¹⁴³
KEY IMPACT		

¹⁴³ *Why territories matter – vertical restraints and portability in audiovisual media services*, Olivier Bomsel and Camille Rosay, October 2013.

Stakeholder	Cons	Evidence
Broadcasters/ distributors KEY IMPACT	The risks of arbitrage between small and large broadcasters/distributors could affect the value of rights, potentially leading to sports rights owners changing the availability and licensing of rights online.	According to evidence from SROC members there is a strong risk that the way content is sold would change overall, given the difference in value between the various markets. This would give large broadcasters/distributors an important competitive advantage, as they would have the financial capability to buy attractive sport content rights. It would then be very difficult for broadcasters/distributors in small territories to acquire attractive sport content.
Broadcasters/ distributors	The exclusivity available to a broadcaster would be diluted even further than anticipated at the time of rights acquisition if passive sales was allowed with no restriction, which in turn would put personalisation investments at risk.	Theoretically, if a broadcaster/distributor purchased the exclusive rights to content in one territory which was then made available on non-geo-blocked FTA online services from other territories, the value of its content would be diluted by the inherent reduction in actual exclusivity, since the licensed broadcaster would cease to be the only broadcaster able to offer the content to the audience in its territory. The impact of this reduction/removal of exclusivity would be more substantial for pay TV if FTA channels from other Member States were to be made available.

A.4.4 Uncertainties

In Figure A.12 below we present the uncertainties that may arise for consumers, sports rights owners and broadcasters/distributors from permitting passive sales of online content services.

Figure A.12: Uncertainties associated with permitting passive sales of online content services [Source: Analysys Mason, 2016]

Stakeholders	Uncertainties	Evidence
Consumers, rights owners, broadcasters/distributors KEY IMPACT	It is unclear how the concept of passive sales could or should be applied to FTA services – major sports bodies are often subject to local listed-events legislation and so do not have the option of not licensing rights to FTA broadcasters. However, cross-border access to FTA online services would be highly detrimental to the exclusivity of other broadcasters/distributors (and thus to rights owners).	FTA services are by definition not sold, and so it is unclear how the concepts of an active sale and a passive sale could be meaningfully applied. If the intention was to enable cross-border access when instigated by the consumer, this would translate into free and full cross-border access for all FTA services, with no regard for how this would disrupt the financing model of major sports and the highly negative impact on the value of those rights to pay TV and on the general competitive landscape for media rights.
Broadcasters/distributors, specifically FTA broadcasters KEY IMPACT	It does not seem practical or realistic to apply the concept of “passive sales” in the Internet environment to sports content services, particularly given how sports content is distributed. This is particularly the case for FTA services (which do not involve a “sale” as such – other than the licence fee), as cross-border access to FTA online services would be highly detrimental to the exclusivity of pay-TV content of other broadcasters/distributors (and thus to rights owners).	Permitting passive sales of online content would allow a consumer in one EU Member State to purchase any online sports audiovisual service which was available in any other Member State, provided the broadcaster/distributor was willing to accept that unsolicited request. However, it raises some questions for FTA content services, which do not involve a “sale” process as such; it is then unclear how the concept of passive sales could or should be applied to FTA services. Also, most FTA online services are not technically capable of rejecting a consumer request (other than with geo-blocking).

A.5 Extending the country of origin (COO) principle to the Internet

A.5.1 Pros

In Figure A.13 below we present the advantages that may arise for consumers, sports rights owners and broadcasters/distributors from extending the COO principle to the Internet.

Figure A.13: Pros of extending the COO principle to the Internet [Source: Analysys Mason, 2016]

Stakeholder	Pros	Evidence
Consumers KEY IMPACT	There would theoretically be a wider choice of general media services, but if contractual freedom was maintained and sports rights owners or their licensees contracted out of the collective arrangement, there would be no real changes to the licensing of online sports content services. However, if contractual freedom was not properly safeguarded, SROC members have indicated that they might have to restrict the sale of rights for exploitation on online platforms throughout Europe.	The COO principle for cable and satellite TV services has increased the number of TV channels available across Europe. ¹⁴⁴ If the same principle was extended to online services we would expect a similar effect on the number of general (non-sports) online audiovisual services, given the lower barriers to entry for online services compared to those for cable and satellite. However, if contractual freedom was maintained and sports rights owners or their licensees contracted out of the collective arrangement, there should be no significant changes to the licensing of online sports content services. However, if contractual freedom was not properly safeguarded, SROC members have indicated that they might have to restrict the sale of rights for online exploitation throughout Europe, as many sports rights owners currently sell their rights on a platform-neutral basis.
Sports rights owners KEY IMPACT	Assuming contractual freedom was protected, sports rights owners would be able to choose the territory(ies) in which to license sports content.	If contractual freedom was maintained, and sports rights owners (and/or their licensees) were able to contract out of any collective licensing arrangement, SROC members have indicated that this scenario would lead to no real changes for online sports content services, as it would maintain the exclusive territorial licensing ecosystem.

¹⁴⁴ The total number of licences in the UK in 2015 was approximately 1110 according to Ofcom. Of those, approximately 950 are Television Licensable Content Service (TLCS). In very broad terms, Ofcom found that in 2013 there were 668 licences held by “companies that described their services as targeting non-UK countries/regions” (including Ireland).

Stakeholder	Pros	Evidence
Broadcasters/ distributors <div data-bbox="201 363 443 430" style="background-color: #4a86e8; color: white; padding: 5px; text-align: center; font-weight: bold;">KEY IMPACT</div>	<p>Theoretically, a larger potential market and audience than that of a single country or territory, although not necessarily all of the EU – extension of the COO principle would make it easier for a broadcaster/distributor to serve consumers in a larger number of Member States (from an operational perspective), if sports audiovisual rights could be acquired for all relevant operational territories, given the contractual freedom of rights owners.</p>	<p>If the COO principle was extended to the Internet, a broadcaster/distributor could more easily distribute content to any Member State where it had acquired rights, thus significantly increasing its market. This means that a broadcaster/distributor based in one territory would be able to serve consumers in every territory across the EU (providing it had cleared the rights to distribute content in each of these territories). This would require the broadcaster/distributor to have agreements in place with an Internet service provider that served each Member State (or one Internet service provider that served them all).</p> <p>In practice, the satellite COO principle has been used to target several territories simultaneously, but not necessarily all EU Member States. In many cases, however, broadcasters have broadcast different national or regional versions to meet particular cultural or language preferences (e.g. Scandinavia, English speaking, German speaking).</p> <p>However, if contractual freedom was not maintained, extension of the COO principle would lead to full cross-border access “through the back door”. This would be very disruptive for sports rights owners, as broadcasters/distributors would be able to “broadcast” everything online throughout Europe, thus undermining the exclusivity principles. According to SROC members, without such contractual freedom, extension of the COO principle would lead to a reduction in content sold, as in the pan-EU licensing model.</p>

A.5.2 Cons

In Figure A.14 below we present the disadvantages that may arise for consumers, sports rights owners and broadcasters/distributors from extending the COO principle to the Internet.

Figure A.14: Cons of extending the COO principle to the Internet [Source: Analysys Mason, 2016]

Stakeholder	Cons	Evidence
Consumers	Broadcasters/distributors from a given Member State might fail to comply with national regulation of another Member State, as in theory they would only be subject to regulation applicable in their home market. In theory, broadcasters/distributors from another territory would only have to comply with minimal EU regulation and that of the country of origin, which might not necessarily cover key regulation in the consumer's market.	Broadcasters/distributors that had acquired rights to sporting events in territories outside the country of origin from which they operate might not comply with national legislation applicable in other EU Member States, unless they developed multiple feeds. Consumers could lose out and key benefits from this legislation could be undermined.
Consumers	As a result of the extension of COO being in effect full cross-border access, consumers would have less choice in terms of access to some premium sports content – extending the COO principle to the Internet might further reduce choice for consumers.	Rights owners might limit the content that broadcasters/distributors could purchase, in order to maintain its value. Furthermore, the choice of same-language content could be reduced if a broadcaster/distributor owned multi-territorial rights for content but only provided that content in a limited range of languages. Overall, consumers would have less choice in terms of some sport premium rights content. In his report commissioned by the European Consumer Organisation (BEUC), ¹⁴⁵ Prof. Dr P. Bernt Hugenholtz even mentioned that “assuming audiovisual content services are currently offered at lower prices to consumers in Member States with lower average consumer spending power, [the extension of COO] might result in price increases in these States”.
Consumers	Any collective licensing model would be incompatible	The centralised selling of media rights has been examined on several occasions by the

¹⁴⁵ *Extending the SatCab Model to the Internet*, Prof. Dr P. Bernt Hugenholtz for the BEUC, October 2015.

Stakeholder	Cons	Evidence
	<p>with both the commercial programmes of sports (sponsorship, anti-ambush, brand, etc.) and also in fundamental conflict with the requirement for many sports to sell media rights by way of tender.</p>	<p>EC, with the common conclusion being that it is beneficial within the framework of the solidarity of sport and also to encourage benefits for consumers, broadcasters and event owners. However, the sale of media rights has also consistently been required to take the form of open competitive tender processes – something that collecting societies¹⁴⁶ would not be able to do. In addition, the model of collective licensing requires standardised pricing and licensing terms, which would be wholly incompatible with the integrated commercial programmes of sports bodies and also ignore the substantial variations in value of sports rights between EU Member states.</p> <p>The commercial programmes associated with sports rights commonly include extensive sponsorship arrangements which are often linked to the purchase of sports rights. There are often contractual terms which are imposed on broadcasters, related to development of the brand and identity of the sport and aimed at promoting the sponsors. These types of obligation would be incompatible with the way that collective licensing functions.</p>
<p>Sports rights owners and broadcasters/distributors</p> <p>KEY IMPACT</p>	<p>Potentially no more sports content on the Internet – some SROC members stated that if the COO principle was extended to the Internet without any guarantee of contractual freedom, sports rights owners might decide to stop licensing Internet rights, which would be prejudicial for consumers and broadcasters.</p>	<p>Rights owners might limit the content that broadcasters/distributors could purchase, in order to minimise or avoid the impact of cross-border access as a result of extension of the COO principle.</p> <p>Based on discussions with SROC members, extension of the COO principle would be likely to have a greater impact on exclusivity than previous cross-border legal requirements (such as passive sales of satellite decoder cards and equipment) and thus lead to more significant restrictions on sports content rights being considered, if the contractual freedom of sports rights owners was not safeguarded. Some SROC members even stated that if the COO principle was extended to the Internet without any guarantee of contractual freedom, sports rights owners might decide to stop licensing Internet rights.</p>
<p>Sports rights owners and broadcasters/distributors</p> <p>KEY IMPACT</p>	<p>Application of the COO principle to the licensing of sports content would be directly contradictory to the rights of intellectual property owners – according to SROC members.</p>	<p>According to SROC members, if the COO principle was extended to the Internet without protecting contractual freedom, this would remove the ability of rights owners to license on a territorial basis (whether with or without exclusivity).</p>

¹⁴⁶ A collecting society is also referred to as a collective management organisation; it is a type of licensing body which grants rights on behalf of multiple rights holders in the form of a single ('blanket') licence, in return for a single payment.

A.5.3 Uncertainties

In Figure A.15 below we present the uncertainties that may arise for consumers, sports rights owners and broadcasters/distributors from extending the COO principle to the Internet.

Figure A.15: Uncertainties associated with extending the COO principle to the Internet [Source: Analysys Mason, 2016]

Stakeholders	Uncertainties	Evidence
Consumers, sports rights owners and broadcasters/distributors KEY IMPACT	If contractual freedom was not maintained, extension of the COO principle would lead to full cross-border access “through the back door”, as the impacts would be the same as those under the scenarios to ban geo-blocking and implement compulsory pan-EU licences.	This would be very disruptive for sports rights owners, as broadcasters/distributors would be able to broadcast everything online throughout Europe without acquiring or paying for a licence in each territory. Among other things, this would result in commercial exploitation by broadcasters/distributors without remuneration for the rights owners, and would undermine the competitive tendering process for the sale of media rights, i.e. the exclusivity principles that play a large part in determining commercial value. According to SROC members, if sports rights owners had no contractual freedom to choose the territories to license, extending the COO principle to licensing of online content would lead to a reduction in content sold, less diversity of content and hence less choice for consumers.
Sports rights owners KEY IMPACT	Uncertainty about whether contractual freedom would be maintained, as it was when the COO principle was introduced for satellite – if it was not, this would prevent sports rights owners from licensing rights by territory or group of territories as they do today and so would have a landscape-changing effect on the marketplace, as no broadcaster would be able to acquire exclusivity unless it was the only licensed broadcaster in Europe.	For satellite services, the COO principle is linked to the contractual freedom of rights owners, which are able to choose the way they want to sell their rights (whether by territory or group of territories or across the whole EU). In this report we have generally assumed that this contractual freedom would be safeguarded if the COO principle was extended to the Internet, but there remains some uncertainty about how the COO principle would be extended. If contractual freedom to choose not to participate in collective licensing was not maintained, our assessment would change significantly, as this scenario could then result in the same impact as under compulsory pan-EU licences. For instance, some SROC members stated that if the COO principle was extended to the Internet without any guarantee of contractual freedom, sports rights owners might decide to stop licensing Internet rights.

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