

EC call for evidence – Combating online piracy of live content

1) the extent of unauthorised retransmission online of live events

Protecting live broadcasts, in particular with regard to sports events, is one of the most challenging anti-piracy tasks for the rightsholders operating in Poland. Domestic sports events are very popular amongst Poles, especially the football league or mixed martial arts. In our members' experience, including, among others major Polish television broadcasters¹, despite utilizing all possible means to protect their live broadcasts the number of infringements, detected through web monitoring, is growing.

A good example being PKO BP Ekstraklasa matches to which CANAL+ Polska S.A. holds exclusive broadcasting rights in Poland - the number of infringements accounts for almost 7 000 in 2022 alone. Another example are infringements detected by Polsat Plus Group. In 2022, during sports events available as a part of Polsat's pay-per-view service, 51 illegal transmissions were detected. As for sports events, which were available on linear sports channels, 59 pirate sites were detected.

Obviously this causes significant losses for broadcasters and federations/leagues/clubs, including above all: lost benefits which the rightsholders could have obtained and expenditures on anti-piracy measures.

The most common way of consumption of unauthorised live broadcasts is through a web browser via streaming websites created especially for this purpose which in most cases uses external sources by embedding video players. IPTV piracy is not so common in Poland, as will be mentioned below.

The main issue which needs to be addressed is that actions conducted over the years by rightsholders in Poland, have forced pirates operating in Poland to move their services abroad, even outside the European Union. Pirate websites are usually located on servers owned by companies from Russia, Ukraine, as well as the Netherlands (Leaseweb seated in Amsterdam, skb-enterprise.com seated in Amsterdam), Latvia (veesp seated in Liepāja) and Bulgaria (cloudwall. bg). In these cases the capabilities of rightsholders and Polish law enforcement are very limited. Poland does not have similar legal tools as those from the other EU countries, where Article 8.3 of Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (“**Directive**”) was fully implemented. It is essential to note that in Polish law there are no efficient remedies which would allow blocking pirate websites (DNS and/or IP blocking) by Internet Service Providers (“**ISPs**”). This explains why in Poland IPTV piracy is not as common as in countries where DNS/IP blocking schemes are already working.

2) the processing of notices by online intermediaries in the case of live events

The actions that can be taken to effectively block access to internet domains or IP addresses used by pirates at the level of online intermediaries are very limited in Poland. There is no site blocking mechanism in force, nor even an official blacklist (similar to e.g. Registry of Gambling Domains which exists in Polish legal system) that can be used to efficiently protect live broadcasts. Usually, ISPs do not take any action because of the exclusion of their liability provided for in the current Polish regulations (art. 12-14 of the Act on Providing Services by Electronic Means, being an implementation of 2000/31 E-Commerce Directive). In practice no ISP accepts site blocking obligations voluntarily, so it is crucial for the proper protection of online content against infringements to implement an obligatory mechanism of site blocking to the Polish regulations. In order to ensure the effectiveness of such a mechanism, especially for live broadcasts

¹ It is worth mentioning Cyfrowy Polsat S.A., Canal + Polska S.A., TVN Warner Bros. Discovery and TVP S.A. (a public broadcast provider).

protection, it is necessary to ensure a more proactive role for ISPs (especially those seated in EU countries) which must act in real - time, as soon as they receive a credible notification from rightsholders.

3) the efficiency of dynamic and live blocking injunctions, and the accompanying procedural safeguards ensuring fundamental rights

Currently there are no adequate legal tools to tackle online piracy through dynamic or live blocking orders in Poland. Art. 8.3 of the Directive has not been transposed fully and correctly and that is why there is no site blocking mechanism in relation to the online piracy of live broadcasts in force. There are no provisions which govern such possibility.

In this context it should be stressed that although the Polish Supreme Court stated (“Chomikuj.pl” judgement issued on 27 May 2022, II CSKP 3/22) that the provisions of Polish Civil Code constitute a legal basis of action against an intermediary, this does not translate into effective and real-time blocking of access to or removal of unauthorized online content at all. Firstly on the basis of these provisions a preventive claim may be limited in practice to situation when the service provider contributed directly to the threat of damage. Preliminary injunctions cannot be issued against “innocent” intermediaries. Additionally, it requires standard court proceedings that in Poland may take several years (for example “Chomikuj.pl” case took 10 years). It means that the existing legal possibilities of content protection are far from the level of those functioning in other EU countries, where Directive was fully implemented.

Therefore, it is necessary to introduce legal provisions allowing for the application of dynamic and live blocking orders into the Polish legal system.

4) the practices and challenges of addressing unauthorized retransmission of live events affecting several Member States

Challenges identified by Sygnal Association in combating the unauthorized transmission of live sporting events in Poland:

- a) lack of effective legal tools to take action to block Internet domains and/or IP addresses used by pirates at the level of ISPs;
- b) cross-border activity of pirate website operators; especially entities operating outside the European Union;
- c) anonymization of pirate website operators;
- d) slowness of law enforcement authorities and court proceedings²;
- e) low priority and low interest of law enforcement authorities in dealing with intellectual property infringement cases;
- f) costs of anti-piracy measures (e.g. staff on duty during sporting events, monitoring of Internet and dealing with infringements).

5) the role of national competent authorities, in particular in the use of dynamic and live blocking injunctions, and experience of or opportunities for cross-border cooperation

Problems, often faced in our everyday practice, are: (i) relatively low priority and low interest of law enforcement authorities in dealing with intellectual property infringement cases, (ii) lack of awareness that

² For example: website Weeb.tv has been illegally distributing TV channels since around the year 2012 and despite the ongoing criminal investigation is still available to Internet users both in Poland and abroad.

linking to content on external websites that has been made available without the consent of authorized entities also constitutes public dissemination and also (iii) the legal status of a live transmission of sports events which in the view of some authorities does not constitute a work protected by copyright or it's not considered as a protectable broadcast.

At the same time, though, we would like to point out the importance of providing the relevant authorities with effective, binding instruments to use dynamic and live blocking injunctions in relation to the online piracy of live broadcasts. Here, a key role could fall to the relevant ministry - similarly as in the case of gambling, where the Register of Gambling Domains³ was created and thus site blocking mechanism was implemented (pursuant to the Gambling Law of 19 November 2009).

³ The register (available at <https://hazard.mf.gov.pl/>) is a government website that lists gambling companies operating in Poland illegally which ISPs, under pain of penalties, are required to block.