

## Media & Entertainment - France

### New rules on broadcasting rights for sporting event clips

Contributed by **Nomos**

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#### Background

The right of television channels to broadcast for free brief clips from sporting competitions and major events in the interest of the right to public information – and despite the exclusivity granted to competing channels – was introduced in France in the 1990s and codified 20 years later in Article L333-7 of the Code of Sport. Article L333-7 provides that:

*"The license of the exploitation rights for a sport event or competition to a public communications service via electronic means may not undermine public information activities carried out by other public communications services via electronic means. The seller or purchaser of this right may not object to the broadcast by other public communications services via electronic means of brief extracts taken gratuitously among the images of the licensed services freely chosen by the broadcasting party which has not been licensed exploitation rights. These extracts are to be broadcasted for free during news programmes."*

In 2012 the legislature gave the Superior Audiovisual Council (CSA) the power to set the conditions for the broadcast of brief clips after consulting the National Olympic Committee and the organisers of sporting events. On January 15 2013 the CSA adopted a decision to specify the requirements for the use of free brief clips. However, following strong objections from various sports federations and leagues, which led to an appeal for annulment to the Council of State, the CSA launched a public consultation in September 2013.

The rules regulating the coverage of *bona fide* news events have been criticised by the holders of rights in sporting events, which argue that such rules give overly broad broadcasting rights to television news channels for free. As a result, On October 15 2014 the CSA issued a new decision, which came into force on January 1 2015 and aims to strike a balance between:

- public interest considerations;
- compliance with channels' editorial freedom; and
- the legitimate business concerns of sports federations and licensed television channels which hold exclusive rights in return for payment.

#### New rules

The basic rules applicable to the coverage of *bona fide* sporting events and news events remain unchanged:

- Television channels are prohibited from broadcasting any clips before the end of the first broadcast of the sporting event or competition.
- Television channels must display the name or logo of the channel holding the rights in the extract being broadcast for at least five seconds.
- The news access right applies to television channels and their catch-up services, but not to video on demand.

In addition, new rules govern the manner in which such clips may be broadcast.

With regard to the broadcast volume, the recent decision establishes two maximum broadcast durations:

- "3 minutes per day of competition" (instead of the 90 seconds originally laid down); and
- "30 seconds per match of regular sport competition".

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In any case, the broadcast duration of such clips may not exceed one minute and 30 seconds per hour of air time.

A competition or event 'day' is defined as a calendar day. However, a 'day of regular competition' is the period during which all matches of the same phase of the competition take place. Therefore, a day of regular competition can cover several days (eg, a Champions League football match day may last from Friday evening to Sunday evening). In addition, for each day of competition during which several matches take place, the number of clips that can be used must always be less than the scheduled number of matches. When sporting competitions have an overall duration of six minutes or less, the broadcast duration of clips must not exceed 25% of the total duration of the competition, although a time of less than 15 seconds may not be imposed.

Further, clips cannot be made available on catch-up television services more than seven days after the first broadcast of the sporting competition or event on the channel that holds the rights. Moreover, for news programmes broadcast at least daily, clips may be used by television channels only for up to 24 hours from the end of the first broadcast of the competition or event.

In response to the complaints of licensed channels, the CSA has significantly narrowed the definition of programmes authorised to broadcast clips. This now covers only television news, regular news bulletins and multi-disciplinary or general information sport programmes that are broadcast at least weekly. Therefore, single-discipline programmes such as football programmes, which primarily generate their content with clips of competitions broadcast by competitor television channels, are now excluded.

In addition, in consideration of the adjustments made by the CSA to the regulation of the news access right, the CSA also requires television channels using free clips to promote less publicised sports. As such, the CSA has set an annual exposure requirement for 24 disciplines taking into account the diversity of sport practices (eg, male and female sports, disabled sports).

### Comment

The decision will require broadcasters to monitor carefully the number and duration of clips used for news programmes, particularly sports news programmes, in order to comply with this complex web of rules. Its application will be subject to a progress report within six months.

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