

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (91) 5

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE RIGHT TO SHORT REPORTING ON MAJOR EVENTS
WHERE EXCLUSIVE RIGHTS FOR THEIR TELEVISION BROADCAST
HAVE BEEN ACQUIRED IN A TRANSFRONTIER CONTEXT

*(Adopted by the Committee of Ministers on 11 April 1991
at the 456th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Noting that the development of transfrontier television services has led the broadcasters operating them to acquire exclusive television rights in major events for countries other than their country of origin;

Recalling that Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms embodies freedom of expression and freedom to receive and impart information;

Recalling also Article 9 of the European Convention on Transfrontier Television, concerning the access of the public to major events, according to which "each Party shall examine the legal measures to avoid the right of the public to information being undermined due to the exercise by a broadcaster of exclusive rights for the transmission or retransmission, within the meaning of Article 3, of an event of high public interest and which has the effect of depriving a large part of the public in one or more other Parties of the opportunity to follow that event on television";

Aware of the importance of the issues raised by the practice of exclusive rights for major events, particularly from the perspective of smaller broadcasters in Europe, notably those in countries with a limited geographical or linguistic area;

Resolved to pursue consideration of those issues with a view to determining the possibility of achieving additional legal solutions in this area,

Recommends the governments of the member states to take into account the principles set out below in the elaboration and adoption of measures to safeguard the public's right of access to information on major events where exclusive rights for their television broadcast have been acquired in a transfrontier context;

Instructs the Secretary General to transmit this recommendation to the states Parties to the European Convention on Transfrontier Television which are not members of the Council of Europe.

Definitions

For the purposes of this recommendation :

“Major event” means any event in which a broadcaster holds the exclusive rights for its television broadcast and which is considered by one or more broadcasters from other countries as being of particular interest for its (their) public.

“Exclusive rights” means the rights acquired contractually by a broadcaster from the organiser of a major event and/or from the owner of the premises where the event is taking place, as well as from the authors and other rights holders, with a view to the exclusive television broadcast of the event by that broadcaster for a given geographical zone.

“Primary broadcaster” means the broadcasting organisation which holds the exclusive rights for the television broadcast of a major event.

“Secondary broadcaster” means any broadcasting organisation from a country other than the primary broadcaster wishing to provide information, by means of short reports, on a major event for which the primary broadcaster holds the exclusive rights.

“Short report” means such brief sound and picture sequences about a major event as will enable the public of the secondary broadcaster to have a sufficient overview of the essential aspects of such an event.

Principles

Principle 1 — Conditions for the exercise of the public's right to information

In order to enable the public in a given country to exercise its right to information, the property right of the primary broadcaster should be subject to limitations which are in accordance with the terms and conditions set out hereafter.

Principle 2 — Making of short reports

1. Subject to other contractual agreements between the broadcasters concerned, any secondary broadcaster should be entitled to provide information on a major event by means of a short report :
 - a. by recording the signal of the primary broadcaster, for the purpose of producing a short report ; and/or
 - b. by having access to the site to cover the major event, for the purpose of producing a short report.
2. In the implementation of the foregoing principle, the following aspects should be taken into consideration :
 - a. if a major organised event is composed of several organisationally self-contained elements, each self-contained element should be deemed to be a major event ;
 - b. if a major organised event takes place over several days, it should give the right to produce at least one short report for each day ;
 - c. the authorised duration of a short report should depend on the time needed to communicate the information content of the major event.

Principle 3 — Use of short reports

When fixing the conditions for the use of short reports by the secondary broadcaster(s), the following should be taken into account :

- a. the short report should be used exclusively by the secondary broadcaster and only in regularly scheduled news bulletins ;
- b. in the case of a major organised event, the short report should not be broadcast before the primary broadcaster has had the opportunity to carry out the main broadcast of the major event ;

c. unless otherwise agreed by the broadcasters concerned, the short report should mention the name and/or insert the logo of the primary broadcaster as the source of the material, where the short report has been made from the signal of the primary broadcaster ;

d. a short report which has already been broadcast should not be reused, unless there is a direct link between its content and another topical event ;

e. all original programme material within the possession of the secondary broadcaster which has been used for the making of the short report should be destroyed after production of the short report, and the primary broadcaster should be informed of its destruction ;

f. short reports may be preserved in archives but may not be reused except in the circumstances referred to in paragraph d.

Principle 4 — Financial terms

1. Unless otherwise agreed between them, the primary broadcaster should not be able to charge the secondary broadcaster for the short report. In any event, no financial charge should be required of the secondary broadcaster towards the cost of television rights.

2. If the secondary broadcaster is granted access to the site, the event organiser or site owner should be able to charge for any necessary additional expenses incurred.